

PARLIAMENT OF NEW SOUTH WALES



STAYSAFE Committee

Improving the health of the motor vehicle insurance and
smash repair industries: Shifting the focus to public safety

Report of a review of progress in implementing the findings and
recommendations of an inquiry into motor vehicle smash repairs
under the Insurance Australia Group (NRMA Insurance)
Preferred Repairer Scheme

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Terms of Reference

The resolution of the Legislative Assembly

From the Proceedings of the Legislative Assembly of New South Wales, Thursday 13 October 2005:

That this House requests the STAYSAFE Committee to inquire into motor vehicle smash repairs under the Preferred Repairer Scheme operated by the NRMA and IAG Insurance, and the risk to safety arising from:

- (1) Repairers quoting for jobs by inspecting photos of damaged vehicles rather than physically inspecting the damaged vehicle.
- (2) Financial penalties if damage is later uncovered that was not apparent through the internet photographs, possibly leading to cost cutting and unsafe repair practices.
- (3) Use of second hand vehicle parts, further compromising safety.
- (4) The NRMA and IAG employing unqualified smash repair assessors to photograph and help administer vehicles for repair.

The STAYSAFE Committee

The general terms of reference of the STAYSAFE Committee are as follows:

- (1) As an ongoing task, the Committee is to-
 - (a) monitor, investigate and report on the road safety situation in New South Wales; and
 - (b) review and report on counter measures aimed at reducing deaths, injuries, and the social and economic costs to the community arising from road accidents.

Without restricting the generality of the foregoing, the following are to be given urgent consideration -

- (i) countermeasures aimed at traffic accidents associated with alcohol and other drugs.
- (ii) traffic law enforcement measures and their effectiveness.
- (iii) a review of human factors affecting traffic accidents, especially those relating to driver and rider licensing requirements and standards.
- (iv) the social and economic impact of deaths and serious debilitating injuries resulting from traffic accidents.
- (v) heavy vehicle safety.

CHAIRMAN'S FOREWORD

The STAYSAFE Committee first reported on the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme, and its implications for roadworthiness, crashworthiness and road safety, in December 2005 (STAYSAFE 66, 2005, Report No. 9/53). Since that time there has been considerable debate surrounding the findings and recommendations made in that report.

In late March 2006, the STAYSAFE Committee recalled Insurance Australia Group (NRMA Insurance) and the Motor Traders Association to examine their responses to findings and recommendations about the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme. This report documents the testimony of these representatives together with other relevant papers.

The STAYSAFE Committee is encouraged by the inroads made by Insurance Australia Group (NRMA Insurance) and the Motor Traders Association to resolve the issues under dispute. Progress has been achieved in the area of consumer protection and consumer choice. Insurance Australia Group has demonstrated its capacity to respond to consumer demand by making important changes to components of its Care & Repair system, including the reinstatement of the choice of repairer option as a standard feature of comprehensive motor vehicle insurance policies, and the elimination of the tender adjustment factor. Equally, the Motor Traders' Association has proven its ability to use this inquiry as an opportunity to engage in constructive dialogue with the Minister for Fair Trading and Insurance Australia Group as well as other relevant stakeholders in an attempt to respond to the Committee's findings and recommendations affecting the smash repair industry.

Nonetheless, there remains a need for further effort to secure a safer system for the repair of crashed motor vehicles under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme. Some issues of concern remain, including continuing attempts to implement systems that are designed to steer customers towards smash repairers who are preferred by Insurance Australia Group (NRMA Insurance), and changes to terminology regarding the true volume of rectifications (repair of repairs) under the Insurance Australia Group (NRMA Insurance) scheme.

This inquiry by the STAYSAFE Committee has informed the state Government's efforts to address consumer safety issues within the motor vehicle insurance and the smash repair industry. The Office of the Minister of Fair Trading has worked to protect consumer interests caught up in the highly publicised conflict between the Motor Traders' Association and Insurance Australia Group. This has involved extensive mediation and negotiation with these two major parties. The recently announced national motor vehicle insurance and repair industry code of conduct, which the State government has indicated will serve as the basis for a mandatory code of conduct for motor vehicle insurers and smash repairers in New South Wales, will act as an important framework for a more constructive relationship between insurers and smash

repairers. The STAYSAFE Committee is hopeful that this will support an ongoing solution to safety concerns raised.

These positive developments, however, have been tempered by outstanding safety issues that require action from all of those implicated in this inquiry. Whilst significant progress has been made on a number of fronts, the STAYSAFE Committee believes that this progress has not been driven by an intention to protect public safety. Insurance Australia Group has consistently characterised serious safety concerns raised by the Committee as 'teething problems' in its web based repair management system. The Committee views this response as reflective of a strategy of avoidance of Insurance Australia Group's responsibility for protecting public safety. Further, tactics employed by Insurance Australia Group in their dealings with the Committee, the Motor Traders Association, and the smash repair industry throughout the inquiry point to a corporate culture which is not supportive of the proactive management and monitoring of new and emerging systems for potential negative impacts on safety outcomes.

Equally, the STAYSAFE Committee notes that the Motor Traders' Association has used this inquiry as a platform for issues that have not always been central to the terms of reference of this inquiry. The Committee does not dispute the importance of the consumer's right to choose their own repairer and has acknowledged this in the first report of this inquiry.

Finally, the STAYSAFE Committee has not yet received a formal whole-of-government response to the full range of findings and recommendations made in the STAYSAFE 66 2005) report in December 2005. While the Minister of Fair Trading has endeavoured to address significant consumer issues, this only represents part of the Committee raft of concerns, and the questions of roadworthiness and crashworthiness of repaired motor vehicles—essential elements of road safety within the New South Wales road transport network—remain. The Committee looks forward, in particular, to receiving the response from the Roads and Traffic Authority on these matters.

STAYSAFE will continue to monitor progress in relation to the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme, and its implications for roadworthiness, crashworthiness and road safety.

Acknowledgments

I am grateful, as ever, for the advice and counsel of my colleagues on the STAYSAFE Committee. I would like, in particular, to thank the Hon. John Tingle MLC, who retired from Parliament in May 2006, for his work on the STAYSAFE Committee for the past 11 years (1995-2006). I wish him well for the future.

I thank Ms Annette Phelps, Committee Officer, and Mr Ian Faulks, Committee Manager, for preparing the draft of this report, and thank also Mr Bjarne Nordin,

Senior Committee Officer, and Ms Millie Yeoh, Assistant Committee Officer, for their assistance in the administration of the inquiry and the public hearing.

Paul Gibson MP
Chairman

EXECUTIVE SUMMARY

Since the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme commenced, there has been an improvement in Insurance Australia Group's responsiveness and capacity to engage in constructive dialogue both with other major parties and with STAYSAFE. Notwithstanding this improvement, Insurance Australia Group has not fully acknowledged STAYSAFE's findings as they relate to critical questions of road safety—questions of roadworthiness and crashworthiness relating to repaired motor vehicles following a crash. This remains a cause for concern for STAYSAFE.

It is therefore critical that the Mandatory Code of Conduct for motor vehicle insurers and the smash repair industry should give consideration to corporate governance requirements – accountability, transparency – that will ensure continuing and stringent monitoring of safety and efficacy of the care repair system by Insurance Australia Group.

The impacts of technological advancement for the way in which damaged motor vehicles are assessed and repaired is a significant issue for government, the smash repair and motor vehicle insurance industries that needs to be addressed strategically and in a long-term planning context. This means all major parties need to demonstrate a commitment to putting in place systems and processes as well as policy and legislative frameworks that are about the ongoing monitoring of standards and practices in the smash repair and insurance industries for potential and real impacts for public safety. In other words, a significant cultural shift is needed.

In this progress report, STAYSAFE has not proposed any additional recommendations to those in the STAYSAFE 66 (2005) report

The following key findings reflect the progress to date in relation to this inquiry.

Whole of government response required

STAYSAFE notes the efforts undertaken by the New South Wales government, in particular the Minister for Fair Trading, for providing a constructive and mediated forum for the Motor Traders Association and Insurance Australia Group to discuss and attempt to resolve the issues which lie at the heart of this inquiry. It is important, however, that the government does not lose sight of the full range of issues that are at the heart of the findings and recommendations of this inquiry.

STAYSAFE recognises the importance of the efforts undertaken by the Minister for Fair Trading in relation to the Code of Conduct and ensuring good outcomes for consumer protection however a coordinated whole of government response is required that addresses the full range of safety issues identified by STAYSAFE. A clear statement of the government's position from the relevant portfolios is just as critical in

STAYSAFE's view as Insurance Australia Group and the Motor Traders' Association taking responsibility for changing practices in their respective industries.

Developing a strategic approach to addressing safety issues identified by this inquiry

It is important that all relevant major parties remain cognisant that this inquiry is first and foremost about protecting public safety. Although the terms of reference for this inquiry are specific to the practices of one insurance company, the ramifications are industry wide. The impacts of technological advancement for the way in which damaged motor vehicles are assessed and repaired is a significant issue for government, the smash repair and motor vehicle insurance industries that needs to be addressed strategically and in a long-term planning context. This means all major parties need to demonstrate a commitment to putting in place systems and processes as well as policy and legislative frameworks that are about the ongoing monitoring of standards and practices in the smash repair and insurance industries for potential and real impacts for public safety. In other words, a significant cultural shift is needed.

Because of the controversy surrounding the inquiry and the attention given to the negotiations between the Motor Traders' Association and Insurance Australia Group, the response from all major parties to the public safety issues identified by STAYSAFE has largely been one of crisis management and 'policy on the run'. This is in contrast to a response that could be grounded in long-term strategic planning and acting in the interests of public safety.

The controversy that has been generated from this inquiry and associated political processes and negotiations between the major parties should in no way steer attention away from the fundamental issues that this inquiry has sought to address. Whilst the issue of choice of repairer is an important one, it does not canvass the full extent of STAYSAFE's concerns.

Principles of consultation need to inform a mandatory code of conduct

STAYSAFE notes the importance of a mandatory code of conduct for motor vehicle insurers and the smash repair industry in setting standards for consumer protection and the practices of smash repairers and motor vehicle insurers. STAYSAFE believes that it is critical that the major parties mutually agree on the importance and necessity of this code and its provisions. The imposition of legislation by the government resulted from a failure to resolve the dispute between Insurance Australia Group and the Motor Traders Association and it is important that this code of conduct does not become yet another platform for strained relations, but rather a set of principles respected by both parties. It is regrettable that the government was forced into a legislative solution due to the failure of the major parties to resolve outstanding issues. Any solution arrived at under duress is not likely to result in increased level of cooperation between the major parties.

The new mandatory code of conduct for the smash repair industry is designed to resolve the long-running dispute between repairers and Insurance Australia Group. At this stage, the Minister for Fair Trading has indicated that the code will include a system of guarantees for repairers, an independent external dispute resolution mechanism, and up front disclosure on whether insurance policies provide true choices of repair.

This mandatory code of conduct is to be based on the national motor vehicle insurance and smash repair code of conduct, a voluntary code developed in response to the 2005 Productivity Commission report into the smash repair and motor vehicle insurance industry. This is a voluntary code of conduct includes provisions for:

- Full disclosure of preferred repairs, issuing quotes, and disclosing whether insurance policies give consumers a choice of providers
- The right for consumers to a decision within ten business days of making a claim. Guidelines so that all consumers understand what they are entitled to expect from their insurers, and have the ability to complain if services are lacking.
- Insurers who select repairers directly must take responsibility for the quality of repairs and handle any complaints that may result from inadequate repairs.

While STAYSAFE believes that there is considerable ground to be covered before issues of quality and safety of repair and consumer choice are fully resolved, the emphasis on the need for a negotiated outcome should continue. Relying on the use of legislation to ensure the rights of consumers and smash repairers are protected should not be treated as the only solution. Commitment to principles of good corporate governance and a proactive approach to issues management are equally important.

Corporate governance considerations for Insurance Australia Group

Insurance Australia Group has undertaken efforts to change certain components of its Care and Repair System, specifically the elimination of its Tender Adjustment Factor and the paid choice of repairer option. STAYSAFE notes, however, Insurance Australia Group's reluctance to acknowledge that these changes have resulted from the inquiry and STAYSAFE's report.

There has been considerable improvement in Insurance Australia Group's responsiveness and capacity to engage in constructive dialogue both with the Committee and other major parties since this inquiry commenced. Notwithstanding this improvement, Insurance Australia Group remains incapable of fully acknowledging STAYSAFE's findings as they relate to critical questions of safety. This is cause for concern. The changes mentioned above are not grounded in concerns for road safety.

STAYSAFE is concerned by the number of issues raised by members of the public as well as cases forwarded by the Motor Traders Association. These include cases of

vehicles with structural damage that have been processed via the web-based repair management system. Insurance Australia Group has clearly stated in evidence that the web-based tendering system is intended only to process vehicles with minor or non-structural damage. This, in addition to the lack of detail provided to STAYSAFE on changes to the Care & Repair system, indicate that there are cultural and structural impediments to good practice.

Insurance Australia Group's apparent lack of a coordinated approach to the management of the revised Care & Repair system is further evidence of these impediments to good practice. In evidence provided to STAYSAFE on 27 March 2006 and in later correspondence and discussion, Insurance Australia Group was not able to provide a definitive position on whether or not policy holders are required to take their damaged vehicles directly to a Care & Repair Centre or if they also have the choice of taking damaged vehicles to a repairer of their choice. This is despite formal testimony that the choice of repairer option has been reinstated without qualification.

It is therefore critical that a mandatory code of conduct should give consideration to corporate governance requirements – accountability, transparency – that will ensure continuing and stringent monitoring of safety and efficacy of the Care & Repair system by Insurance Australia Group.

Insurance Australia Group's approach to addressing web-based repair management system issues

Serious allegations have been raised relating to the conduct of Insurance Australia Group toward non-Preferred Smash Repairers. STAYSAFE notes that internal reports commissioned by Insurance Australia Group have not found any significant abuse or misbehaviour by smash repairers during the dispute (see, for example, the report by Jarratt Enterprises Pty Ltd of an investigation of "issues likely to arise in the context of the introduction of WRM" in mid-2005). Correspondence between Insurance Australia Group executives, regarding the future operation of the Care & Repair system, that has been obtained by STAYSAFE is indicative such options as customer choice of repairer remain the subject of significant internal debate within that organisation.

Provision of additional information by Insurance Australia Group on amended components of the Care & Repair system

Whilst STAYSAFE commends Insurance Australia Group for the efforts they have undertaken to date to engage in dialogue with some of the other major parties and make changes to the Care & Repair system, the level and nature of detail provided is lacking. The further responses provided by Insurance Australia Group only provide general indications of future intention with insufficient detail for STAYSAFE to make an assessment of their usefulness.

Insurance Australia Group gives mention to a range of new initiatives which replace existing elements of the Care & Repair system or seek to address particular 'teething problems' associated with the Care & Repair system. Reference is also made to a new quotation system that Insurance Australia Group is developing in consultation with the Motor Traders' Association to replace the 'funny time funny money' method. While STAYSAFE realises that this is in its developmental stages, it is important that more details are provided about key elements of this system.

The reinstatement of the choice of repairer policy option is an important symbolic gesture on the part of Insurance Australia Group and shows a willingness to be responsive to customer concerns. Of importance to the STAYSAFE are what systems and processes will be put in place by the insurer to ensure that customers (policy holders) are not 'steered by default'. STAYSAFE needs reassurance that Insurance Australia Group will not, for example, make it easier for policy holders to have their car repaired with a Preferred Smash Repairer or through providing scripts to call centre staff or to staff in Care & Repair centres promoting a 'preference' that their damaged motor vehicle be repaired by a smash repairer selected by the insurer even though they have the option of choosing their own repairer. STAYSAFE has examined a number of instances where the practices adopted to direct a customer to a particular smash repairer are very dubious indeed, including hectoring of the customer to allow the work to go to a smash repairer nominated by Insurance Australia Group, disparaging comments about a smash repairer chosen by the customer, and underquoting by the Insurance Australia Group preferred smash repairer to secure the work and later adjustment of the cost of repair to reflect the true cost. As well, STAYSAFE is aware of dubious practices when the repair work is given to a non-preferred smash repairer, including unreasonable delays in the conduct of quality inspections of completed work, further hectoring of customers that difficulties in scheduling the repair work or in releasing the repaired vehicle to the customer are consequential to the customers choice of a non-preferred smash repairer.

Insurance Australia Group has ceased the use of the Tender Adjustment Factor as of 1 December 2005. This has been replaced with a 'five-stage performance management process'. This system is intended to prevent the practice of 'lowballing' which involves smash repairers submitting incomplete quotations to win work unfairly with the intention of submitting a variation during the course of repairs.

Whilst STAYSAFE understands the purpose of such a system, Insurance Australia Group is yet to provide evidence that demonstrates the extent of "lowballing" in the smash repair sector to warrant such a program. Even if it were the case that "lowballing" was occurring on a widespread scale, it remains unclear to STAYSAFE how the proposed new system addresses the original safety concern that repairers may still be reluctant in to report damage, and ignore or only partially perform repairs that are necessary to restore a damaged motor vehicle to a fully safe condition.

Motor Traders' Association adopt a proactive approach to building relationships with government and the insurance industry

STAYSAFE has found that there needs to be a more proactive approach by the Motor Traders Association with government and the motor vehicle insurance industry. This may be achieved through devices such as a memorandum of understanding, and a regular consultative mechanism. STAYSAFE has surprised to note that its public hearing in late March 2006 was the catalyst for the first consultative meeting between Insurance Australia Group and the Motor Traders Association following the release of the STAYSAFE 66 (2005) report, and that significant differences have continued since then on issues such as agenda and minutes. A continuing proactive approach will allow the development of a longer term strategic and constructive focus for the motor vehicle smash repair industry, and minimise, or hopefully avoid, the need for crisis management approaches as has occurred in the current dispute with Insurance Australia Group over the Preferred Repairer Scheme and the operation of the web-based repair management system.

STAYSAFE notes that the Motor Trader Association has a primary role in ensuring that its smash repairer membership is aware of their obligations in terms of ethical industry standards in the motor vehicle repair process and in terms of the continuing education of its membership as the technologies and design of motor vehicles continues to evolve. Appropriate sanctions need to be supported by a culture and attitude that is based on best practice and consumer focus.

Additional data requirements for the Roads and Traffic Authority

STAYSAFE has found the responsiveness of the Roads and Traffic Authority to be lacking in the context of this inquiry. This is surprising as the core issues identified by STAYSAFE are road safety issues associated with the roadworthiness and crashworthiness of the New South Wales vehicle fleet.

The Roads and Traffic Authority has not provided a formal submission to the inquiry or a response to the findings and recommendations in the STAYSAFE 66 (2005) report. STAYSAFE understands that the views of the Roads and Traffic Authority may be included in a whole of government response that is in preparation.

As well, STAYSAFE has identified an important study undertaken by the Authority that have considerable implications for the inquiry: the Crashed Vehicle Study conducted between 1995 and 1998 (see STAYSAFE 55, 2002, for a brief summary of this project. The Roads and Traffic Authority has provided an executive summary of the Crashed Vehicle Study. STAYSAFE is yet to receive a copy of the full final report of the Crashed Vehicle Study. STAYSAFE believes this study to be fundamental to understanding the crashworthiness and roadworthiness of vehicles involved in road crashes, an issue which is central to the inquiry.

Further investigation into roadworthiness and crashworthiness

STAYSAFE notes that this progress report has not examined the general issues of roadworthiness and crashworthiness of repaired motor vehicles following a crash.

Ongoing monitoring by STAYSAFE

STAYSAFE has indicated that it will require another update from the major parties regarding the motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme, and its implications for roadworthiness, crashworthiness and road safety.

Chapter One—

INTRODUCTION

- 1.1 STAYSAFE first reported on the Inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme, and its implications for roadworthiness, crashworthiness and road safety in December 2005 (Report No. 9/53). This report generated considerable controversy. Over 100 submissions were received and evidence was taken from more than 30 witnesses in 16 hours of public and in camera hearings. The report included findings and recommendations relating to serious safety concerns about the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme, in particular the Web Based Repair management system. The Preferred Repairer Scheme was found to be unsafe in its current form and operation. Importantly, the report also addressed wider issues about standards and practices within the motor vehicle repair and motor vehicle insurance industries as well as policy and legislative responses.
- 1.2 Just as STAYSAFE identified a number of safety concerns specific to Insurance Australia Group's Care & Repair centres and the web-based repair management system, the Committee found there to be safety concerns relating to practice and standards within the motor vehicle repair industry. Accordingly, the findings and recommendations of STAYSAFE clearly pointed to a shared responsibility across motor vehicle insurers, the motor vehicle repair sector and government to address safety issues.
- 1.3 A complex series of events have transpired since December 2005 involving all major parties, reflecting the level of controversy generated by STAYSAFE's findings and recommendations.
- 1.4 These include managerial changes at Insurance Australia Group, further moves by the Motor Traders' Association to pursue anti-steering legislation and a decision from the state government to introduce a mandatory code of conduct for smash repairers and motor vehicle insurers.

Insurance Australia Group's executive changes

- 1.5 Since late December 2005, there have been a number of significant changes to the executive team within Insurance Australia Group who had responsibility for the Preferred Repairer Scheme, including responsibility for the Care & Repair and web-based repair management system, as follows:
 - Mr Rick Jackson was removed as the head of Personal Insurance on on 6 February 2006. Mr Jackson has since resigned;
 - The resignation of Mr Gavin Strangwick; and

- The resignation of Mr Gary Pemberton.

Insurance Australia Group's decision to reinstate choice of repairer option

- 1.6 Insurance Australia Group announced on 10 March 2006 that it would reintroduce choice of repairer as a component of the Care & Repair System. The insurer clearly stated that this was not in response to safety concerns (specifically those raised by STAYSAFE) but rather to reflect customer feedback.
- 1.7 The reinstatement of the choice of repairer policy option is an important symbolic gesture on the part of Insurance Australia Group and shows a willingness to be responsive to customer concerns. Matters of importance to the Committee are what systems and processes will be put in place by the insurer to ensure that policy holders are not 'steered by default'. STAYSAFE needs reassurance that Insurance Australia Group will not, for example, make it easier for policy holders to have their car repaired with a Preferred Smash Repairer or through providing scripts to call centre staff stating that it is the insurer's 'preference' that their damaged motor vehicle be repaired, even though they have the option of choosing their own repairer.

Motor Traders' Association pursuit of anti-steering legislation

- 1.8 Following the release of the STAYSAFE report in December 2005, the Motor Traders' Association continued to pursue anti-steering legislation to prevent motor vehicle insurers from directing their policy-holders toward their preferred repairers. The Association engaged in a parallel process of negotiations with selected independent Members of Parliament to develop its support base for this proposal. On 30 March 2006 Richard Torbay, member for the Northern Tablelands, introduced a Private Member's bill, the Motor Vehicle Repairs (Anti-steering) Bill 2006. The purpose of the Bill was to regulate the activities of insurers and repairers in relation to the repair of motor vehicles that are insured against accident damage. The Bill included provisions for preventing insurers from directing policy holders to a specific repairer or supplier.
- 1.9 This was met with fierce opposition from the insurance industry. The Insurance Council of Australia engaged in a media campaign against the Motor Vehicle Repairs (Anti-steering) Bill 2006.

Ongoing negotiations facilitated by the Minister for Fair Trading and the announcement of mandatory code of conduct

- 1.10 The Premier and the Minister for Fair Trading made the Government's preference for a negotiated outcome between both parties clear. At the very outset of the dispute between Insurance Australia Group and the Motor

Traders' Association, the Minister for Fair Trading, the Hon. Diane Beamer, mediated discussions between the two major parties in an effort to come to a mutually acceptable resolution to the issues raised by this Inquiry. Premier Iemma sent a strong message to the Insurance Australia Group and the Motor Traders Association about the importance of reaching a resolution by negotiation in preference to a legislated solution:

Mr TONY STEWART: My question without notice is directed to the Premier. What is the latest information on negotiations between the insurance industry and smash repairers to get a fairer deal for New South Wales motorists?

Mr MORRIS IEMMA: I thank the honourable member for Bankstown for his interest in this matter and the strength of his advocacy, and that of other members, for constituents in the business.

[Interruption]

Members opposite might think it is a joke but many small businesses do not. The issue of anti-steering legislation has set insurers and motor repairers at each other's throats. That is a tragedy for ordinary motorists who want a clear and simple system in place to help when they have an accident. At the heart of this issue is the NRMA's care and repair scheme, which sought to restrict work to a select group of preferred repairers, allocate work using photographs and descriptions posted on the Internet rather than by way of physical inspection, and impose penalties on repairers who increased their quotes after accepting a job.

Understandably, there have been fears that this system would narrow the choice of repairer available to motorists, freeze many motorists out of having the repairer of their choice do the work, and freeze many repairers out of lucrative NRMA work. Repairers have also expressed concern that the Internet-based system would make it difficult to submit accurate and defensible quotes. I know many members of the House share the concern of the honourable member for Bankstown and the honourable member for Northern Tablelands, and their reservations about the NRMA's scheme are very real. I acknowledge the hard work of the Minister for Fair Trading and the chairman of the STAYSAFE Committee to achieve a negotiated settlement.

Mr SPEAKER: Order! Opposition members will cease interjecting.

Mr MORRIS IEMMA: As honourable members would be aware, the NRMA has, to its credit, responded to these concerns and modified the Internet-based allocation of work. It has also withdrawn the preferred repairer model and suspended the penalties system that governs contracts between the NRMA and preferred repairers. The

NRMA's response to community concerns has demonstrated goodwill on its part, and I commend it for the measures it has taken and the progress that has been made. The Minister is sympathetic to the need for a system that balances the interests of insurers, repairers and the motoring public. That is why the meeting to be held tomorrow between the Government, the NRMA and the Motor Traders Association [MTA] is a vital opportunity to deliver a solution.

The Government's position is simple: The insurance industry and the Motor Traders Association need to come up with a model that protects consumer choice, gives repairers a fair go and provides insurers with value for money. I call upon all parties to find that solution without delay tomorrow, because if they do not fix the issue by negotiation the Government will fix it through legislation. I sincerely hope that tomorrow's meeting produces the fair and balanced outcome that the motoring public expects.

(Proceedings of the Legislative Assembly of New South Wales, Wednesday 5 April 2006, p.35)

- 1.11 As an outcome of the lengthy negotiations mediated by the Minister for Fair Trading, the NSW Government announced a mandatory Code of Conduct for motor vehicle insurers:

Mr RICHARD TORBAY: My question is directed to the Premier. Can the Premier advise the House of recent developments in the dispute between smash repairers and the insurance industry?

Mr George Souris: Why don't you get him to ask that question from the Government side?

Mr MORRIS IEMMA: Why does the honourable member for Upper Hunter not ask a question about this issue? What has he had to say on the subject? Nothing. The honourable member for Northern Tablelands asked the question because Opposition members have had nothing to say about this matter.

Mr SPEAKER: Order! The honourable member for Coffs Harbour will come to order.

Mr MORRIS IEMMA: Those opposite do not care about motorists or small business smash repairers. That is why the honourable member for Northern Tablelands and Government members are left to ask the questions.

This issue was last raised on 5 April in response to a question from the honourable member for Bankstown. The honourable member for Bankstown, the honourable member for Blacktown and the honourable member for Northern Tablelands and one Opposition member—we will come to him in a moment—are interested in this

matter. I outlined the Government's firm commitment to the resolution of this issue. On that day I issued a statement on behalf of the Government. I said that the insurance industry and the Motor Traders Association [MTA] needed to come up with a model that protects consumer choice, gives repairers a fair go and provides insurers with value for money.

Mr George Souris: Gibbo should be answering this question. He's the one who fixed this up.

Mr MORRIS IEMMA: I am glad that the honourable member for Upper Hunter is paying tribute to the honourable member for Blacktown. That is good. I told the industry that if it did not fix this issue by negotiation the Government would fix it through legislation. The Government has always pushed for a negotiated settlement in this dispute. The Minister for Fair Trading has spent many hours at the negotiating table with all parties. She is doing very well. I can advise the House that both repairers and consumers have achieved major gains as a result of the negotiations with the NRMA and the MTA. Consumers are now free to choose their own repairer at no additional cost. This right will be tested by the Minister for Fair Trading to ensure that consumers get what has been promised.

I can advise the House that under the agreement repairers will no longer be penalised for discovering additional damage after winning the tender for a repair. But the negotiations that brought these agreed changes also pointed to the need for some new rules covering the whole vehicle insurance and smash repair industries. There must be more transparency and a fairer deal for all. I can inform the House that the Government will mandate an industry code to provide greater certainty to the smash repair industry. The mandatory code will be based on the motor vehicle insurance and repair code of conduct, which is being developed nationally. Our code will be reinforced with penalties. The code will ensure a fair deal for consumers and a sustainable industry for both repairers and insurers.

The proposed anti-steering legislation introduced by the honourable member for Northern Tablelands focused the Government's attention on the need for alternative solutions in this dispute. Some suggested that anti-steering legislation would mean higher premium costs for consumers. But the honourable member's efforts to push for a resolution are greatly appreciated. The Office of Fair Trading will work with key stakeholders to implement the code. The Government's decision has received the support of the MTA. Both NRMA Insurance and the MTA have come a long way in their negotiations on a number of issues in this dispute. Their input will be vital in finalising the code. In conclusion, I acknowledge the efforts of the Minister for Fair Trading; the honourable member for Bankstown; the honourable member for Blacktown, the chair of the Staysafe committee; you, Mr

Speaker; and the honourable member for Northern Tablelands. The honourable member for Lane Cove also deserves special mention for the role that he has played in this dispute.

Mr Peter Debnam: Name him!

Mr MORRIS IEMMA: Mr Roberts. I thank him and the other honourable members I mentioned for their work in attempting to achieve an acceptable outcome to this dispute.

(Proceedings of the New South Wales Legislative Assembly, Wednesday 3 May 2006, p.40)

- 1.12 STAYSAFE acknowledges the potential benefit of a mandatory code of conduct in setting standards for consumer protection and the practice of smash repairers and motor vehicle insurers, however STAYSAFE believes that it is critical that the major parties mutually agree on the importance and necessity of this code and its provisions. The imposition of legislation by the Government resulted from a failure to resolve the dispute between Insurance Australia Group and the Motor Traders Association and it is important that this code of conduct does not become yet another platform for strained relations rather than a set of principles respected by both parties. It is regrettable that the Government was forced into a legislative solution due to the failure of the major parties to resolve outstanding issues. Any solution arrived at under duress is not likely to result in increased levels of cooperation between the major parties. However, STAYSAFE remains hopeful that the negotiations to date have established a firm foundation for improved relations between the two major parties. The Committee looks forward to reviewing the full code of conduct including any sanctions that will apply if its conditions are breached.

Department of Fair Trading review of the outcomes of Insurance Australia Group's improvements to web-based repair management

- 1.13 Following the Office of Fair Trading's review in November 2005 of Insurance Australia Group's web-based repair management system, a subsequent review was undertaken of the outcomes of Insurance Australia Group's improvements to this system. This report can be found in Appendix A.
- 1.14 Against the background of the difficult relationship between Insurance Australia Group and the Motor Traders' Association, which has included legal action and negative media campaigns, STAYSAFE believes that this inquiry has from its very outset favoured an outcome based on dialogue, mediation, mutual resolution and most importantly—a better outcome for public interest and safety. The work of STAYSAFE has critically informed initiatives undertaken by the Minister for Fair Trading who has also endeavoured to work with both parties to reach a negotiated outcome in relation to the use of the web-based repair management system and the choice of repairer component of Care and Repair. STAYSAFE believes that this Inquiry has made a positive contribution

to improving relations between the Motor Traders Association and Insurance Australia Group.

- 1.15 In addition, STAYSAFE does not want to lose sight of the fact there are still many outstanding issues which require a formal response from government agencies in the Fair Trading and Roads portfolios (the Roads and Traffic Authority). These issues are addressed in more detail in Chapter XX. STAYSAFE looks forward to reviewing the formal response of the relevant government agencies.
- 1.16 STAYSAFE made a commitment to monitor and review the response from all relevant parties to the findings and recommendations included in the report. Following the December 2005 report, STAYSAFE has received many more submissions and has taken further evidence from the Motor Traders Association and Insurance Australia Group in relation to their response to STAYSAFE's recommendations. This progress report documents and examines:
- The response of the major parties to the findings and recommendations of the STAYSAFE Committee. The major respondents are the Insurance Australia Group and the Motor Traders Association;
 - New and emerging issues since the December 2005 report relevant to the Inquiry's Terms of Reference; and
 - the actions undertaken by the major parties in the three months since the report was tabled.
- 1.17 STAYSAFE will continue to monitor and review the response from the major parties and anticipates that the Committee will formally revisit progress in relation to this inquiry later in 2006.

Chapter Two—

THE RESPONSE OF THE MAJOR PARTIES TO THE FINDINGS AND RECOMMENDATIONS OF THE STAYSAFE 66 (2005) REPORT

- 2.1 The following chapter outlines responses to date of the Insurance Australia Group (NRMA Insurance), the Motor Traders Association and the smash repair industry to STAYSAFE's findings and recommendations.
- 2.2 STAYSAFE is yet to receive a formal response from the relevant New South Wales government agencies and departments.
- 2.3 The responses from the major parties concerned are addressed in relation to each individual recommendation.

The Insurance Australia Group Preferred Repairer Scheme

Suspend web-based repair management

RECOMMENDATION 1: Insurance Australia Group (NRMA Insurance) suspend web-based repair management, as a component of the Care & Repair centre system of allocating damaged motor vehicles to motor vehicle smash repairers without the repairers physically inspecting the damaged vehicle before quoting for work, as it is an unsafe system in its current form and operation.

Insurance Australia Group

- 2.4 STAYSAFE found the web-based repair management as a component of the Care & Repair system to be unsafe in its current form and operation. Insurance Australia Group (NRMA Insurance) has consistently defended web-based repair management, maintaining that the system provides for safe and quality repairs. The insurer does concede, however, that this is an 'evolving' management system which therefore may be subject to improvements and changes. Suspension of the system would, Insurance Australia Group argues, be about protecting the smash repair industry from competition and not about improving safety outcomes. This was made clear by Insurance Australia Group's Chief Executive Officer, Mr Michael Hawker:

Mr HAWKER: Let me say at the outset that we have carefully examined the report and have spent considerable time during the past three months talking to all stakeholders about its contents, including

our customers, our repairers, the Motor Traders Association New South Wales and State and Federal Governments. We have listened to what has been said and have made several improvements. However, we stand by our preferred repairer network and web-based repair management system. The reason for this is quite simple—both these systems provide for safe and quality repairs for our customers. Notwithstanding this, care and repair and web-based repair management systems continue to evolve and we are constantly making operational improvements.

Late, Mr Hawker commented:

Mr HAWKER: From our perspective, I would like to make the comment that the suggestion of suspending or abolishing the web-based repair management system is about protecting the industry from competition, and not safety. The best course is to continue to look at ways of improving an evolving system, which is part of a repair model that successfully delivers quality and safe repairs to approximately 13,000 NRMA Insurance customers every month. We acknowledge the issues this Committee has raised and I would like to briefly address the report's recommendations that specifically required action from NRMA Insurance. In light of the report we have asked ourselves a few salient questions. Have there been teething problems in implementing the new system? Like the introduction of any new system, care and repair and the web-based repair management systems are constantly evolving. All good systems improve over time.

and

Mr GIBSON (CHAIRMAN): The web-based repair system was found to be unsafe in its current form and operation when the Committee reported in late December 2005. For the record, can you confirm that the IAG has not suspended the web-based repair management system as a component of the care and repair centre system of allocating damaged motor vehicles to motor vehicle smash repairers as recommended by the Committee? In other words, is the web-based system still there?

Mr HAWKER: We do not believe it is unsafe. We know that was a Committee recommendation, but, as I said in my opening statement, we do not believe it is unsafe, so we kept it running.

2.5 The insurer's position was again made clear in its further submission responding to STAYSAFE's findings and recommendations:

"Most of the concerns articulated by the Committee related to teething problems with the WRM system which have now been rectified through refresher courses, intensive training, upgrades of

painting and lighting and the Care & Repair Centres and the abolition of the Choice of Repairer option.” (Insurance Australia Group, Submission NRS 050.2, p. 3)

- 2.6 STAYSAFE notes that some changes have been made to the current form and operation of the web-based repair management system and address, in part, the safety issues raised by the Committee. These changes include the abolition of the paid choice of repairer option and the Tender Adjustment Factor; workshops, training and refresher courses for Motor Assessing Managers, assessors and other staff in carrying out the web-based repair management system; improving skills of assessors in taking digital images of damaged vehicles as well as upgrading lighting and painting in Care & Repair Centres. Notwithstanding Insurance Australia Group’s admission that the web-based repair system is an evolving one and that they will ‘continue to look at ways of improving’ the system, STAYSAFE believes that this is not a safety-net or guarantee that any possible connection between the quality and safety of repairs and the use of the web-based repair management system will be monitored in the longer term.
- 2.7 In reviewing Insurance Australia Group’s response to STAYSAFE’s findings and recommendations, there has been an increased recognition on the insurer’s part that its level of consultation with the Motor Traders Association prior to the introduction of the web-based repair management system should have been better. This admission, in part, demonstrates that this inquiry has acted as a catalyst for improved relations between the two major parties:

Mr GIBSON (CHAIRMAN): You have already stated in previous hearings that you did not have discussions with the Motor Traders Association before you made the move to web-based repair management.

Mr ISSA: The issue of choice was introduced in November 2004 and that was talking to the Australian Competition and Consumer Commission and the industry; they were involved in those discussions. This is before my time but I believe that was the process that had gone through in November 2004 for us to introduce choice. Web based repair management was introduced in July of last year. So there is a gap between the process of going through the choice issue and then introducing the web; they were two separate, if you like, things that happened.

Mr GIBSON (CHAIRMAN): That is right, but Mr Strong gave evidence at our last hearing that you did not talk with the Motor Traders Association.

Mr HAWKER: About putting in place the web-based repair management system, that is probably correct.

Mr ISSA: On the web, not the choice issue.

Mr HAWKER: And I think that is one of the issues that we are trying to rectify, and coming out of this committee is that we have recognised that and we are trying to build a close relationship with the Motor Traders Association. I think we have done quite a lot of work in trying to rebuild a relationship.

Motor Traders' Association

- 2.8 Despite Insurance Australia Group's argument that the web-based repair management system is for minor repairs only and its identification of 'teething problems', the Motor Traders Association expressed concern about the uncertainty for the future of its members and the need for regulation:

Mr McCALL: ...They [IAG] have said that this web-based repair management is a new system, and yet at the last hearing they told you that it had been trialled in South Australia, Western Australia and Queensland for the last two years and that it was operating perfectly. This morning we are saying that it is in an evolutionary stage and it has taken us a long time to get it working. I can assure you that in those other States where it is working there is structural damage being quoted for on their Web site. Yes, of course, today things are fine. I do not know about tomorrow, or next week or next year. I will still go back and say there is no regulation to require the insurance companies to behave equitably, and we believe that there should be some regulation to require that.

Suspend use of the tender adjustment factor and other financial penalties

RECOMMENDATION 2: Insurance Australia Group (NRMA Insurance) suspend the use of the Tender Adjustment Factor and any other forms of financial penalties against motor vehicle smash repairers who find and report further damage to a motor vehicle during repair.

Insurance Australia Group

- 2.9 Insurance Australia Group ceased the use of the Tender Adjustment Factor on 1 December 2005. Insurance Australia Group maintains that the Tender Adjustment Factor was intended to protect those smash repairers who provide genuine quotes and prevent the practice of underquoting in order to win a tender and then submit a variation to increase the figure. Insurance Australia Group plans to develop a 'five-stage performance management process' that will seek to address the issues to which the Tender Adjustment Factor was intended to respond. Its decision to suspend this system was in response to 'significant misinformation in the market about the TAF' and not in connection with the impact it had on the quality and safety of repairs, despite STAYSAFE's

finding that the policy is inherently unsafe. Insurance Australia Group's rationale was articulated by Mr Hawker:

Mr HAWKER: I now refer to the abolition of the tender adjustment factor. Another recommendation centred on the removal of the tender adjustment factor [TAF]. The TAF was introduced to prevent repairers inappropriately underbidding for repair work. However, due to significant misinformation in the market about the TAF, we have eliminated it in concert with our preferred repairers and will replace it with a five-stage performance management process. This new method is being developed in close consultation with repairers, for repairers, and will ensure all repairers working within the web-based repair management system can quote on a level playing field.

- 2.10 Insurance Australia Group has provided limited information to STAYSAFE in relation to how the 'five stage performance management process' operates. STAYSAFE understands that the purpose of this process is to prevent the practice of "low-balling". "Lowballing" occurs when a smash repair submits an incomplete quote to win work with the intention of submitting a variation on the quote during the course of repairs. The 'five stage performance management process' involves the identification of repairers that are submitting incomplete quotations and engaging in a formal process of training in the interpretation of a scope of works and, if necessary, initiate a formal warning system. The purpose of the formal warning system is to "...stop unfair and unacceptable behaviour from repairers that are deliberately submitting quotations to win work unfairly with the intention of submitting a variation during the course of repairs for the missing operations" (Insurance Australia Group, Submission NRS 050.3, Annexure B). The process was developed in conjunction with the insurer's preferred repairers.
- 2.11 Whilst STAYSAFE understands the purpose of such a system, Insurance Australia Group is yet to provide evidence that demonstrates the extent of "lowballing" in the smash repair sector to warrant such a program. Even if it were the case that "lowballing" was occurring on a widespread scale, it remains unclear to the Committee how the proposed new system addresses the original safety concern that repairers may still be reluctant to report damage, and ignore or only partially perform repairs that are necessary to restore a damaged motor vehicle to a fully safe condition.
- 2.12 STAYSAFE is pleased that Insurance Australia Group has disbanded the tender adjustment factor. However this action is not recognised by the insurer as a constructive response to safety issues that have been identified. This again raises concerns for STAYSAFE that Insurance Australia Group is not likely to monitor the Care & Repair System, specifically the web-based repair management component, for safety issues. Rather, any subsequent changes to the system are more likely to be 'knee-jerk' reactions to negative publicity as opposed to proactive measures. It could be argued that Insurance Australia Group's characterisations of safety concerns as 'teething problems' is an

obvious strategy of avoidance of the real issues with which this inquiry has grappled with.

Reintroduce policy holder choice of repairer

RECOMMENDATION 3: Insurance Australia Group (NRMA Insurance) reintroduce policy holder choice of repairer at no cost as a component of the Care & Repair centre system of allocating damaged motor vehicles to motor vehicle smash repairers.

Insurance Australia Group

2.13 Insurance Australia Group announced on 10 March 2006 that it would reintroduce the policy holder choice of repairer component of the Care & Repair System. The insurer has clearly stated that this decision was not in response to safety concerns but rather prompted by customer demand:

Mr HAWKER: Although we do not believe this recommendation has a bearing on safety of repairs, especially as our network is selected on criteria including quality of workmanship, we do recognise that this issue as raised by the Committee was causing concern amongst the smash repair industry and some customers. To this end we have reinstated the option for customers to select their own repairer at no additional charge. All customers whose policies renew from 1 May will be able to select their own repairer. I would make the important comment that in taking the decision to reintroduce choice as standard, NRMA Insurance remains as committed as ever to our preferred repairer network. We will continue to recommend our preferred repairers, who are assessed on the quality of their workmanship and their level of customer service, among other factors.

And later:

Mr GIBSON (CHAIRMAN): What is the main reason for the change if it is not safety? Why the about turn?

Mr HAWKER: The reason is because it has become an issue with our customers and with the repair industry and we are trying to solve that. So for us it is a public relations issue and a customer service issue which we are trying to eliminate. The reason why we put the differences is because it came about through a whole lot of discussions with the repair industry a couple of years ago and going through the ACCC, and the ACCC asking us, "Can you make it more transparent what the difference in average repair costs is going to be between your preferred network and if you put it outside your preferred network?" And that is what drove the difference in pricing.

- 2.14 In its supplementary submission to STAYSAFE, Insurance Australia Group indicated that from January–March 2006 there were 65 complaints relating to Choice of Repairer recorded in their claims database. For the period 1 June 2005–31 December 2005, 50 complaints were recorded in relation to the same issue. Insurance Australia Group stated, “these complaints predominantly related to the fact that an additional premium was charged for the Choice of Repairer option” (Insurance Australia Group sub. 50.3, p. 8).
- 2.15 STAYSAFE notes Insurance Australia Group’s responsiveness to this recommendation. However, it is clear that the insurer is yet to fully develop a consistent position on important operational details. Despite stating that it will reinstate the choice of repairer option, Insurance Australia Group was not able to indicate whether or not policy holders are required to take their damaged vehicles straight to a Care and Repair Centre or if they also have the choice of taking damaged vehicles to a repairer of their choice:

Mr BARR (STAYSAFE): I refer to your statement today and the letter sent out by Mr Issa about the reinstated option for customers. Can you explain how that works? Let us say that my car has been damaged and I phone NRMA; what happens?

Mr ISSA: You would phone us and we would then like you to go to a care and repair centre.

Mr HAWKER: That is only if it is in a major city; we are not talking about country areas.

Mr ISSA: At which point we would like to see whether the customer would like us to look after the repair or they have their own repairer that they would like to use. If they have their repairer they would like to use them we’re quite happy for them to go and get that repair quoted.

Mr BARR (STAYSAFE): They can then go directly to their local repairer and that person provides a quote to you.

Mr ISSA: Yes. Our assessors would have seen the car and the damage.

Mr BARR (STAYSAFE): Do your assessors go to the repairer?

Mr ISSA: In the first instance—

Mr BARR (STAYSAFE): I am trying to work out what happens.

Mr ISSA: The customer comes to the care and repair centre.

Mr BARR (STAYSAFE): So the customer must first go to the care and repair centre?

Mr ISSA: We would like them to go to the care and repair centre.

Mr BARR (STAYSAFE): There is confusion in the industry about exactly what is happening. You are saying that you would like the customer to go—

Mr ISSA: Yes.

Mr BARR (STAYSAFE): Can the customer now go straight to a repair shop of his or her choice and then provide a quote to you? There is confusion about this.

Mr ISSA: Yes. Our preference is for the customer to come to the Care & Repair centre. The reason is that we have an obligation to all customers to ensure that if a repair is done outside our preferred network that repair it is done at an appropriate quality and price.

Mr BARR (STAYSAFE): You have used the word "preference" again.

Mr GIBSON (CHAIRMAN): Is it compulsory?

Mr ISSA: No, it is not compulsory.

Mr BARR (STAYSAFE): So I could choose my local repairer?

Mr ISSA: Absolutely.

Mr BARR (STAYSAFE): So, I choose my local repair shop and I take my car, or it is towed there. What happens then?

Mr ISSA: The repairer would submit a quote to us, whichever mechanisms that repairer has to get that quote to us. WE would then have one of our assessors look at that quote. using whatever mechanism is appropriate, and we would then have one of our assessors look at it.

Mr BARR (STAYSAFE): So the assessor would go out?

Mr ISSA: Yes. In that case the car has gone directly to the panel shop. Our assessor would go out and have a look at it—

Mr BARR (STAYSAFE): Have you actually sent any assessors out to repair shops lately?

Mr ISSA: Yes, we do that all the time.

Mr BARR (STAYSAFE): After you have introduced this—

Mr ISSA: Yes, we do that all the time.

Mr HAWKER: The thing starts on 1 May 2006 in terms of the whole process being put in place.

Mr BARR (STAYSAFE): I have had reported to me widespread confusion as to what the heck is going on. People are not clear.

Mr ISSA: One of the things we're trying to clear up, and I know you're seeing the Motor Traders Association next—we are working through with them exactly what the confusion is. We would like to make sure that we work through that and ensure there is consistency and an understanding of how it is going to work. They can take you through it, but we are getting pretty close to ensuring that we have that common understanding between ourselves and all the repairers outside of our network as to exactly how the process will work. We are very close to that. I think in the coming days we will have all those issues resolved to the satisfaction of ourselves and the Motor Traders Association.

Mr BARR (STAYSAFE): I am just trying to ascertain how real the choice is on the part of the customer and whether they can go directly to their local repair shop and what happens after that, or if they go to the care and repair centre and then they say, "I want my car to go to Joe Bloggs near where I live". You are being equivocal as far as I can work out. I am not getting firm statements here.

Mr HAWKER: This is going live on 1 May 2006. We are working through that process. What we are really looking for is our customers will be able to get choice to go to their repairer. The issue for us is we want to make sure the quality of repairs occurs. We are quite happy for our customer to go to a repairer of their choice. The only issue we will then have is if we feel that the repair cost as driven by that smash repairer is substantially out of the ballpark for what would be considered by the majority of smash repairers as a relevant amount of money to be spent. If we felt that was the case we would then get it assessed ourselves and we would have a discussion with the repairer about the difference in price. That is where we would need to find a solution for that particular problem and we would typically talk to our customer and say, "There is a big difference in repair cost between what your preferred repairer is saying and what is happening", and at that stage we might go through some other settlement process.

Mr BARR (STAYSAFE): So you still have not worked out your protocols?

Mr HAWKER: On that particular case, which is a very, very small portion of the number of customers that wish to have that. I think something like 20-odd thousand customers with choice, who had a

choice repairer policy previously, we have over 83 per cent of customers saying they are quite happy for us to manage the repair on their behalf. So the portion you are talking about is a small portion and we are working with the Motor Traders Association at the present time to determine all those protocols for this to go live on 1 May.

Mr GIBSON (CHAIRMAN): Can we come back to point of contact? If my car is smashed and I ring up, the person at the other end of the phone tells me two things or one thing: " We would like you to take it to the repair centre" or "You can take it to your own repairer to have it assessed"?

Mr ISSA: Those issues around the scripting of what exactly the customer says, they are the issues that we are working through to ensure that everybody feels comfortable—we have said the customer has got choice—that everybody feels that as we talk to the customer both when they ring us up and if they come to a care and repair centre that the person actually feels they have got the choice. So we will work through that over the coming weeks and make sure that that is done in a way that people do not feel like we have said we are giving them choice but we are not actually allowing the customer to have the choice at the time. So we just need to work through that in a bit more detail.

Mr HAWKER: Chairman, you have got this in the middle of a whole process of how we are trying to roll this out. We have set a date, we said, because we wanted to state the ground of when we have this operating; we are in the process of all those consultations and resetting up all our documentation, how we are going to script everything from the call centres; how we are going to organise this within the repair industry. So you have got us right in the middle of those discussions.

- 2.16 The reinstatement of the choice of repairer policy option is an important symbolic gesture on the part of Insurance Australia Group and shows a willingness to be responsive to customer concerns. Nevertheless the Committee needs information about the systems and processes to be put in place by the insurer to ensure that policy holders are not 'steered by default'. STAYSAFE needs reassurance that Insurance Australia Group will not, for example, make it easier for policy holders to have their car repaired with a Preferred Smash Repairer or through providing scripts to call centre staff stating that it is the insurer's 'preference' that their damaged motor vehicle be repaired, even though they have the option of choosing their own repairer.
- 2.17 STAYSAFE looks forward to receiving further information from Insurance Australia Group which demonstrates commitment to consumer choice at the operational level.

Motor Traders' Association

- 2.18 In terms of the Motor Traders' Association's position in relation to this recommendation and Insurance Australia Group's subsequent actions, the Association has stated: "Whilst the MTA acknowledges that it is a step in the right direction, it is only one step and there are still numerous recommendations of the Committee that have not yet been addressed" (Motor Traders Association sub. 70.11, p. 5).
- 2.19 The Motor Traders Association's confusion surrounding Insurance Australia Group's position in relation to whether or not it is necessary for all vehicles to be sent directly to a Care and Repair Centre again suggests that the insurer has failed to develop a clear and consistent position on important operational details:

Mr McCALL: I had a series of conversations with Mr David Brown of that organisation and with Mr Issa, that culminated in a meeting last Friday between three of their senior staff, three of our repairers and senior staff from our association to talk about the freedom of choice issue. Certainly, we started to work through that issue and to address some of the confusion. I am even more confused after this morning's meeting because last Friday we were told that every vehicle must go to the centre first. Mr Issa said this morning—and I was pleased to hear him say it—that if a consumer takes their vehicle to a repairer, then the repairer will do an assessment on that vehicle, prepare a quote, get a claim number, and the assessor will come out to the repairer's premises. That is a completely opposite view to the information we were given last Friday, but it is a pleasing change.

No distinction for policy holders owning prestige or other vehicles

RECOMMENDATION 4: Insurance Australia Group (NRMA Insurance) ensure that policy holders owning prestige motor vehicles and other policy holders owning other motor vehicles are treated equally under the Care & Repair centre system of allocating damaged motor vehicles to motor vehicle smash repairers.

- 2.20 Insurance Australia Group continues to directly allocate prestige vehicles to specialist repairers. The insurer argues that this does not equate to the unequal treatment of policy holders owning other motor vehicles. The practice of direct allocation is extended to other vehicles that may or may not be prestige that require specialist repairs (for example special builds, extensive damage and common older cars; Insurance Australia Group, submission NRS 050.2, p.7).

"A vehicle is not automatically directly allocated to a repairer, simply because it is 'prestige'. The decision about whether to tender or directly allocate such vehicles is based on the business rules...Repair

allocation for prestige and other specialised vehicles will depend on the differing repair methods and complexity arising from each different vehicle and the damage it has sustained.” (Insurance Australia Group, submission NRS 050.3, p.6).

- 2.21 Insurance Australia Group provided STAYSAFE with a list of “prestige” vehicles which have been tendered via the web-based repair management system and cites the reintroduction of the choice of repairer option as further evidence that policy holders owning prestige motor vehicles and policy holders owning other less valuable motor vehicles are treated equally.

Cease use of term 'cosmetic damage'

RECOMMENDATION 5: Insurance Australia Group (NRMA Insurance) cease use of the term 'cosmetic damage' with regard to damaged motor vehicles, and replace with 'minor damage' and 'surface panel damage', as opposed to 'major damage' or 'structural damage'.

- 2.22 In accordance with this recommendation, Insurance Australia Group has indicated to STAYSAFE that it has ceased use of the term ‘cosmetic damage’ in relation to work allocated through the web-based repair management tendering system. In evidence given to the Committee, the term “non-structural” is now used by the insurer to refer to repairs that are subject to the tendering system and “structural” with regard to repairs that are to be directly allocated to repairers:

Mr MAGUIRE (STAYSAFE): Can you explain to the Committee the term “cosmetic damage”? We highlighted that we were concerned with that use and suggested that some changes be made. Can you advise the Committee what you have done in that regard using the terminology “major damage”, “minor damage”, “structural damage” and so on?

Mr ISSA: Can I just make a comment on the issue of the types of repairs that we put on the web based management system? We are very confident that only non-structural repairs go up onto the web based repair management system, and that all structural repairs are directly allocated. So we are confident that that is happening in our operational environment today. So we’ve gone to using the terms ‘non-structural’, being the things that we put up on the tendering system. And ‘structural’ are things that we allocate directly to repairers.

Mr HAWKER: We have eliminated the term “cosmetic repair” in our organisation, and we put that in the recommendation we have presented to the Committee.

Mr McDONALD: I recognise that the term "cosmetic damage" caused confusion in some earlier hearings and the organisation has taken some steps to remove it from the operational side of the business. However, the fact remains that cosmetic damage describes damage to the skin in the same way that "cosmetic surgery" refers to repair of damage to the skin. The skin of the vehicle has no safety function. Cars could be driven around with all the body panels, bumper bar covers, door mirrors and even door skins removed. The car would look ugly and would be a hazard to pedestrians, but it wouldn't detract from the safety of the vehicle. The term "cosmetic damage" is used widely internationally and it is used by the car industry and the insurance research industry, of which I am a part, in describing damage that does not affect the structure. However, the organisation has chosen to remove it to avoid any confusion in the future between structural and non-structural repairs.

Abolish the 'funny time-funny money' method

RECOMMENDATION 6: Insurance Australia Group (NRMA Insurance), in consultation with the Motor Traders Association and the Motor Vehicle Review Industry Authority, abolish the 'funny time-funny money' method used in the Care & Repair centre system and other allocation systems used in assigning damaged motor vehicles to motor vehicle smash repairers.

Insurance Australia Group

- 2.23 In its written response to STAYSAFE's recommendations, Insurance Australia Group noted its keenness to reform quoting practices by stating that it has met with the Motor Traders' Association and its Preferred Smash Repairer Steering Committee to develop a "Real Time Real Money" model. The insurer has informed STAYSAFE that it held "a number of discussions over several months with the MTA NSW regarding its real time model. IAG has also met with the MVIRA on a range of issues relating to smash repairs, but has not directly contacted them regarding this specific issue" (Insurance Australia Group sub. 50.3, p. 8).
- 2.24 Insurance Australia Group has indicated that this system is being piloted by eight repairers, including two repairers from outside its preferred network. If successful, the insurer plans to expand the trial with the view to roll out the model more broadly. STAYSAFE believes that, to the extent that commercial-in-confidence allows, it is important that the outcomes of this pilot should be shared with the motor vehicle repair and insurance sectors to promote the development of more appropriate quoting systems:

Mr HAWKER: The next aspect is hourly rates and funny time, funny money. There has been considerable discussion and debate about hourly rates charged by repairers and the concept of funny time,

funny money. This is a legacy system that we are keen to change, and we have been working with the Motor Traders Association New South Wales for some months on a more transparent system of quoting. This work is ongoing. I should point out that under the tendering system hourly rates and funny time, funny money are substantially eradicated as repairers are asked to quote a single price to undertake each repair job. The Insurance Australia Group [IAG] is currently working with Motor Traders Association New South Wales on a pilot project involving eight smash repairers in the Sydney region to determine a better model to work toward real time, real money.

Motor Traders' Association

- 2.25 The Motor Traders' Association has advised STAYSAFE that it has written to the relevant parties requesting a meeting to discuss this recommendation. The Motor Traders Association did not advise the outcomes (if any) of this request.
- 2.26 Evidence given by the Motor Traders Association also indicates that some progress has been made in developing an improved system:

Mr COLI: If I can add to that, you heard conversations earlier in relation to real time, real money as opposed to funny time, funny money. The new time sheet that the Motor Traders Association has developed has got two specific columns in that time sheet where once having received information on preferred methods of repair or proper methods or standard of repairs from the manufacturer, that information will be available in those columns for either, one, the repairer to be able to quote from at the beginning of the quote once inspecting the motor vehicle or, two, an assessor to be able to have access to and identify the true and proper method according to the manufacturer to repair the motor vehicle. In the time sheet that has been developed for the purpose of real time, real money, those two columns do appear for best practice or manufacturer's methods in the motor trader's time sheet.

Insurance Australia Group review hourly rate paid to motor vehicle smash repairers

RECOMMENDATION 7: Insurance Australia Group (NRMA Insurance), in consultation with the Motor Traders Association and the Motor Vehicle Review Industry Authority, review the current hourly rate paid to motor vehicle smash repairers paid under the Care & Repair centre system and other allocation systems used in allocating damaged motor vehicles to motor vehicle smash repairers.

Insurance Australia Group

- 2.27 Insurance Australia Group has informed STAYSAFE that the web-based repair management system has "...moved away from hourly rates in favour of a total quote, allowing the repairer to set their own shop rate. For direct allocations, in conjunction with the 'IAG times manual' (which is a Funny Time – Funny Money model), \$30.90 is the rate used by most repairers in our network" (Insurance Australia Group, submission NRS 050.3, p. 8).
- 2.28 Insurance Australia Group has also indicated that this recommendation is being addressed as part of its work with the Motor Traders' Association and its Preferred Smash Repairer Steering Committee to develop a "Real Time Real Money" model as outlined in their response to Recommendation 6. The insurer has stated, however that "Pricing is a matter for individual insurers" (Insurance Australia Group sub. 50.2, p. 8).

Motor Traders' Association

- 2.29 The Motor Traders' Association has advised STAYSAFE that it has written to the relevant parties requesting a meeting to discuss this recommendation. The Association did not advise the outcomes (if any) of this request.

NRMA brand

RECOMMENDATION 8: In the interests of public understanding, there needs to be a better delineation of the NRMA brand between Insurance Australia Group (NRMA Insurance) and NRMA Motoring & Services, in order to restore the NRMA brand to represent, inter alia, safe vehicles and safe road use.

Insurance Australia Group

- 2.30 Insurance Australia Group stands by its use of the NRMA brand stating that this has always been consistent with the set of agreed "Business Protocols" developed by Insurance Australia Group and NRMA Motoring Services in 2000. The Trade Practices Act and NSW Fair Trading Legislation, the insurer argues, ensure that consumers are protected from being misled with regard to the provision of goods or services under the NRMA brand. Insurance Australia Group believes that "...any potential public confusion is likely to be in relation to what the brand means since demutualisation" (Insurance Australia Group sub. 50.2, p. 9).

Safety assessment and inspection of repaired motor vehicles

Audit and inspection program for motor vehicles repaired after major or structural crash damage

RECOMMENDATION 9: The Roads and Traffic Authority, in consultation with the Office of Fair Trading, New South Wales Police, Motor Traders Association, and the motor vehicle insurance sector, initiate a program incorporating audit and inspection to assess the safety of repaired motor vehicles following major or structural crash damage.

Insurance Australia Group

2.31 Insurance Australia Group has stated that there is “No basis in report to suggest repairs to structural damage are unsafe” (Insurance Australia Group sub. 50.2, p. 10).

Motor Traders’ Association

2.32 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. Meetings were to take place with the Roads and Traffic Authority on 19 April 2006. The Association advised that a meeting had taken place with the NSW Police (Motor Traders Association sub. 70.11) but did not advise of the outcomes (if any) of this meeting. At the time of making their submission, the Association indicated that it was in the process of planning a meeting with the Office of Fair Trading on 24 March 2006.

Electronic imaging during repair processes of structural components in damaged motor vehicles

RECOMMENDATION 10: The motor vehicle insurance sector and the Motor Traders’ Association assess the feasibility of requiring electronic imaging during repair processes of damaged structural components in motor vehicles to document the work undertaken for subsequent assessment and possible certification regarding crashworthiness.

Insurance Australia Group

2.33 Insurance Australia Group has stated that whilst it is supportive of the use of electronic images for internal auditing purposes, “IAG does not support the use of images as a method of assessing the structural integrity of vehicles” (Insurance Australia Group sub. 50.2, p. 10).

Motor Traders' Association

- 2.34 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association did not advise the outcomes (if any) of this request.

Recording and reporting of motor vehicles that have undergone major repairs

Register of motor vehicles that have undergone major repairs

RECOMMENDATION 11: The Motor Vehicle Repair Industry Authority and the Roads and Traffic Authority, in conjunction with the Insurance Council of Australia and the motor vehicle insurance sector, develop a register of motor vehicles that have undergone major repairs, including listing of major or structural components have been replaced, repaired, and not repaired on the vehicle, which can be attached to the Register of Encumbered Vehicles—REVS, or the Roads and Traffic Authority's motor vehicle registration database.

Insurance Australia Group

- 2.35 Insurance Australia Group does not support this recommendation, arguing that developing a register of motor vehicles that have undergone major repairs would result in a decline in the resale value of such vehicles (Insurance Australia Group sub. 50.2, p. 10).
- 2.36 This was further reinforced in evidence given by Insurance Australia Group, emphasising that such a register would create a perception that repaired motor vehicles are inherently substandard:

Hon. RICK COLLESS (STAYSAFE): I refer to your comments a few moments ago regarding the deformation characteristics of new cars versus repaired cars. I think you said that it is very difficult to ensure that the precise deformation characteristics exist on the car that has been repaired, compared to a new car. Am I correct?

Mr McDONALD: Without physically crashing every car that is repaired, yes.

Hon. RICK COLLESS (STAYSAFE): Would not make sense, then, for buyers of second-hand cars to know that the car that they are buying may not have the same crash characteristics as a new car?

Mr McDONALD: Do you mean have some sort of notation?

Hon. RICK COLLESS (STAYSAFE): In the Committee's recommendations there was a suggestion that a register should be kept of vehicles that have had major structural repairs done to them so that people could determine whether or not that might be a safe car to drive.

Mr McDONALD: Again, we are relying on the integrity and the skills of the repair industry. In the example of, say, wrecks returning to the road, there is already a process in place where written-off—

Hon. RICK COLLESS (STAYSAFE): These cars may drive very well on the road but they just do not have the same crash characteristics as the original vehicle.

Mr HAWKER: As the Hon. Rick Colless said, a very large percentage of those cars will be repaired appropriately and be just as safe as a new car. If a small proportion of them have inadvertently been poorly repaired and a car involved in an accident has been structurally repaired, you are going to change the perception to a view that they are all substandard. I think that would create a public relations issue for the used-car market, which would be a significant problem and would force up dramatically a lot of prices. I understand where you are coming from what I would be looking to try to find another solution to that problem if we could.

Necessary qualifications, training, knowledge and skills for loss assessors and adjusters

Reintroduction of licensing of loss assessors and adjusters

RECOMMENDATION 12: The Minister for Fair Trading review whether licensing of loss assessors and adjusters should be reintroduced in New South Wales.

Insurance Australia Group

2.37 In its supplementary submission to STAYSAFE, Insurance Australia Group stated: "IAG does not believe there is a safety imperative for assessors to be licensed, but is happy to work with industry and government on this." (Insurance Australia Group sub. 50.2, p. 10).

2.38 In further evidence given to the Committee, Insurance Australia Group was clearer in its support of a training and licensing scheme:

Mr HAWKER: ...During the inquiry the Committee also raised the issue of a universal and independent system for the training and

licensing of assessors. While we have one of the best trained assessing networks in Australia, NRMA Insurance is happy to place on the record that it would support a proposal to implement such a training and licensing scheme. We would be happy to assist in the development of such a program and share the benefit of our knowledge and experience in this area.

Role of peak professional bodies in the accreditation of loss assessors and adjusters

RECOMMENDATION 13: Motor vehicle loss assessors and adjusters be accredited with the Institute of Accident Assessors, Institute of Public Insurance Assessors, or some similar organisation in regard to licensing.

Insurance Australia Group

2.39 Insurance Australia Group stated “Assessors should be licensed according to a single standard, reflecting experience in the motor trades. Being licensed by both a professional organisation and a regulator body is unnecessary duplication.” (Insurance Australia Group sub. 50.2, p. 10).

Loss assessors and adjusters to regularly upgrade knowledge and skills

RECOMMENDATION 14: Motor vehicle loss assessors and adjusters be required to enhance their knowledge and skills on a regular basis.

Insurance Australia Group

2.40 Insurance Australia Group stated: “IAG believes there is no safety imperative, but supports recommendation as long as no prescriptive regulatory regime.” (Insurance Australia Group sub. 50.2, p. 11).

Knowledge and skills required of loss assessors and adjusters

RECOMMENDATION 15: The Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, review and report on the motor vehicle damage assessment and repair knowledge and skills required of loss assessors and adjusters to use a web-based repair management system such as that used by Insurance Australia Group currently.

Insurance Australia Group

- 2.41 In its supplementary submission to STAYSAFE, Insurance Australia Group stated "Assessors should be licensed according to their expertise and experience in the motor trades." (Insurance Australia Group sub. 50.2, p. 11).
- 2.42 In further evidence given to the Committee, Insurance Australia Group outlined specific activities it had undertaken to increase photographic training for its assessors:

Mr HAWKER: In relation to the training and licensing of assessors, a recommendation was made to improve the quality of photographic imagery of the system, increase assessor training and introduce licensing of assessors. I can advise that NRMA Insurance has introduced expanded photographic training for our assessors to ensure all web-based digital images of damaged vehicles are as clear as possible.

Motor Traders' Association

- 2.43 In evidence given to the Committee, the Motor Traders' Association indicated that a meeting date had been set with the Office of Fair Trading and the Motor Vehicle Repair Industry Authority to discuss this recommendation. The Association indicated that it had written to the Insurance Council of Australia who had not responded to its request for a meeting:

Mr MAGUIRE (STAYSAFE): Gentlemen, has the Motor Traders Association been consulted by the Motor Vehicle Repair Industry Authority or the motor vehicle insurance sector about motor vehicle damage assessment and repair knowledge and skills required of loss assessors and adjusters to use the web-based repair management system, such as that used by Insurance Australia Group?

Mr McCALL: We have had some discussions with the Assessors Institute. Mr Coli will outline those discussions. The Motor Vehicle Repair Industry Authority and the Office of Fair Trading have contacted us and have set down a meeting date of, I think it is, 9 April for us to sit down and to try and work through those very, very important issues.

Mr MAGUIRE (STAYSAFE): Have you been working with the Office of Fair Trading and the Insurance Council of Australia to assess the feasibility of requiring a system of independent loss assessors and adjusters for the assessment of damaged motor vehicles?

Mr McCALL: We have written to the Insurance Council of Australia and they have ignored our correspondence. Certainly the Office of Fair Trading, the Motor Vehicle Repair Industry Authority and other bodies

essential to addressing that resolution have contacted us and have been very co-operative.

Mr COLI: To go one step further, we submitted a model as a supplementary from the first inquiry to use an assessor allocation system making the assessor totally independent from loyalty to the paymaster, whether it is an employed or independent contractor.

Feasibility of independent loss assessors in motor vehicle insurance claims

RECOMMENDATION 16: The Office of Fair Trading, in consultation with the Motor Traders Association and the Insurance Council of Australia, assess the feasibility of requiring a system of independent loss assessors and adjusters for the assessment of damage to motor vehicles.

Insurance Australia Group

2.44 Insurance Australia Group has stated: “No logical connection between independent licensing and being independent of insurers. Has no place in the market based economy.” (Insurance Australia Group sub. 50.2, p. 11).

Motor Traders’ Association

2.45 The Motor Traders’ Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association indicated that a meeting with the Roads and Traffic Authority and the Office of Fair Trading had been planned.

Assessment and certification of roadworthiness

Roadworthiness of damaged vehicles during claims assessment processes

RECOMMENDATION 17: The Roads and Traffic Authority, in consultation with the Office of Fair Trading, New South Wales Police, Motor Traders Association, and the motor vehicle insurance industry, assess the roadworthiness and road safety issues associated with policy holders being required to drive damaged motor vehicles to and from motor vehicle insurers’ assessment centres and to smash repairers.

Insurance Australia Group

2.46 Insurance Australia Group has stated: “IAG reviewing internal processes to ensure roadworthiness is considered at time of claims lodgement. Safety imperative not established by report.” (Insurance Australia Group sub. 50.2, p. 11).

Motor Traders' Association

2.47 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association indicated that a meeting with the Roads and Traffic Authority and the Office of Fair Trading had been planned and advised that a meeting had taken place with NSW Police. The Motor Traders Association did not advise of the outcome of this meeting.

Certification of roadworthiness after repair

RECOMMENDATION 18: A system of motor vehicle safety inspectors be devised and made available in major centres to certify that repairs to damaged motor vehicles involving structural components comply with Australian Design Rules, relevant New South Wales safety standards for vehicle operation, and manufacturers standards before the motor vehicles are allowed to again be driven on New South Wales roads.

Insurance Australia Group

2.48 Insurance Australia Group has stated: "No basis for saying additional certification is warranted by safety concerns. It would be costly and time consuming requirement." (Insurance Australia Group sub. 50.2, p. 11).

Policy holders to be able to request certificate of roadworthiness from motor vehicle insurer

RECOMMENDATION 19: Motor vehicle insurers be required to supply policy holders with a certificate of roadworthiness for a motor vehicle after crash damage involving major repair or structural repairs, if requested, and to ensure that policy holders are advised that they can request the certificate of roadworthiness from the insurer under this circumstance before taking delivery of their motor vehicle.

Insurance Council of Australia

Insurance Australia Group

2.49 The motor vehicle insurance industry has indicated their opposition to this recommendation as articulated by the Insurance Council of Australia:

"Insurers are strongly opposed to this recommendation....there is no sound basis in the committee's report that this additional certification is warranted by safety concerns. It would add cost and, regardless of who pays the inspector, the cost would flow through to higher insurance costs for consumers...The insurers' responsibility to policyholders is covered in the insurance contract – the insurer is only

responsible for the repair of the damage, not the ongoing maintenance and roadworthiness of the vehicle. This proposal would also delay claim settlement and reduced service levels" (Insurance Council of Australia sub. 91.2, p. 9).

- 2.50 STAYSAFE questioned Insurance Australia Group further on this issue. The insurer argued that the integrity and skills within the smash repair industry should be such that damaged motor vehicles should be repaired to a standard and a system of certification should not be required:

Hon. RICK COLLESS (STAYSAFE): Could I turn to the issue of roadworthiness and crashworthiness. In the report there were quite a few recommendations which related to both certificates of roadworthiness and certificates of crashworthiness. Reading through your response to the recommendations it is very obvious that you are opposed to any of those certificates or any of those processes being put in place on the basis, and I quote from your response to the Minister—this is in relation to a certificate of roadworthiness after repair—that the recommendations basically said that there needs to be in place a certificate to say that repairs to damaged motor vehicles involving structural components comply with the Australian design rules and you say that the insurers are strongly opposed to that recommendation on the basis that no consideration has been given to the cost benefits of such a system. Would not just one death being avoided by that process being in place be sufficient justification?

Mr McDONALD: One of the major problems with a proposal such as that, which sounds fine in theory, is it implies that someone can look at a car and say that it is safe or that it complies with Australian design rules, and I do not believe that is the case. I think it is far better to rely on the integrity of the repair industry and the skills of the repair industry to repair the car to acceptable standards. It is not possible, once a car is finished and painted, to put it up on a hoist and say, "No, that is not going to crash properly". I do not believe that is the case, and I do not think it is possible. I think we would just be adding unnecessary cost without any real benefit.

Mr HAWKER: The last thing we would want to have is an unsafe car on the road. We are the largest CTP underwriter in the State; we are the largest motor insurer in the State; we have a real concern about safety within the whole of the community. We are the major funder of most of the safety advocacy components; we run the research centre; we talk about blackspots in New South Wales; all that comes from the insurance part of NRMA business. So this is a pretty key issue for us and the last thing we would want to have is someone that had a road accident due to an unsafe motor car; that would be a complete anathema to us.

Hon. RICK COLLESS (STAYSAFE): When the main part of the hearing was being conducted, when this issue came up it was something that really concerned me because we took evidence that there were a number of vehicles on the road, particularly vehicles that had front chassis rails repairs through heating and stretching and welding, that certainly did not have crash characteristics anything like the original motor vehicle did. That is of great concern to us.

Mr HAWKER: I was not here when that evidence was given so I do not have that information available to make a comment. I am also not a structural engineer. Robert might be able to from a research point of view.

Mr McDONALD: There are industry standards and there are car industry standards around car repair and restoring the integrity of structural parts in the car and there are limits—there have always been limits to what we call deformation damage that is actually repairable in most car structures. Usually, once a certain amount of deformation takes place, then the preferred system is to sever that structural part at a point designated by the car maker and replace it with a new structural part. This is fairly standard industry practice. I do not see what this suggestion has specifically to do with care and repair, given that care and repair—to, unfortunately, use the word "cosmetic" again—was originally designed purely to cater for those drivable low damage accidents, not requiring major structural work or even structural replacement.

I am not aware of individual details of some of the cases but some of the cases that may have been presented would be the sorts of things that happen every day in the repair industry and the things we try and get rid of by trying to make sure that we deal with a more select group of repairers that we trust and we understand their skills and we send jobs to them that are appropriate to their skills. There is a vast array of skills in the industry. It is my 20th anniversary next month of working for NRMA Insurance. I originally came from the car industry and to introduce me to the ins and outs of the car industry I was given a drivable damaged vehicle to take around to probably 15, 20 repairers to get quotes on those jobs. And I was then, we had those, we had drive in assessing areas at that time and we were using that to check out the skills of our assessing staff to look at those repairs, and every time one of those procedures was taking place we had a variation from lowest to highest in terms of the quotes we received from the repairers of more than 100 per cent—it was often 150, sometimes 200 per cent—and the true repair job was somewhere in the middle; it was not the lowest.

We would determine what a correct or a fair repair would be and there were some people that would underquote, and we did not think that was the right thing. We would counsel our assessors on making sure

that they pushed that repairer to not miss things and to do that sort of thing. There were others that were overquoting. But the previous scheme where it was open to all and sundry and every repairer in New South Wales, the repairer that quoted the most inevitably got the most money for the job because there would be a reluctance on the assessor to reduce his quote more than a certain amount. So that the guy that overquoted by 100 per cent would still get 20 per cent more than the guy who quoted fairly. I think that is what we are trying to avoid by having something like the preferred repairer scheme.

- 2.51 In response to further questioning from STAYSAFE, Insurance Australia Group made clear that, from its perspective, ultimate responsibility for the quality of repairs rests with the smash repairer, not the insurer:

Mr MAGUIRE (STAYSAFE): Recommendation 19 states that policyholders should be able to request a certificate of roadworthiness from the motor vehicle insurer. I note that the Insurance Council of Australia sent a list of responses to a report and it strongly opposed this recommendation. Is your organisation strongly opposed to it? I think it needs to be looked at from a wider perspective. A lot of repairers in the industry may not necessarily work for your company or be in your network but they may be contracted by an individual to have car repaired after major structural damage. The issue is about customer confidence and the wording used in the recommendation is "if requested". The Insurance Council of Australia felt that it would add to the cost for consumers and that there was no sound basis for this additional certification. If I was having a major repair carried out on my motor vehicle I would like to know that the vehicle had been inspected, no matter who repaired it. My point is: Why can the industry not consider a small charge for such a certification so that motorists can drive out of the repairers being confident that the repairs have been done to the proper standard. This is not just about your insurance company but all of them.

Mr HAWKER: I understand that. You raise an interesting issue. The difficulty we have is that the end of the day the smash repairer is providing the repairs and if anyone is to issue a certificate of roadworthiness, it should come from the smash repairer who did the repairs because he or she is the only person who can essentially speak about the quality of the work they have put into it. It is more difficult for the insurance industry to do that on a complete blanket process. We build up our information about repair networks over a long period of time about quality, customer concerns, the types of work repairers do, the skill sets they have and that has built our preferred network to where we are comfortable with the quality of the repair network we have, we are able to make that testimony on behalf of our customers because we have a close enough relationship with those repairers to essentially say to our customers that we are willing to give a lifetime guarantee on that work.

When we do not have that ongoing relationship and close association and knowledge of what is going on, it is a very difficult process to do that. I think what the Insurance Council of Australia is really getting at is saying that when you are putting in more processes of accreditation, that normally has a cost benefit analysis to it, and the real question is whether it would improve road safety dramatically out of that incremental test. I think the Insurance Council would say, "We are not sure that there is any information saying that it would". As an industry they are saying, "We would request before such a process was put in place, could someone please do the cost benefit analysis of that, to try to get some factual basis behind that." But in terms of a roadworthiness certificate, it really would have to come from the repair industry itself.

Mr MAGUIRE (STAYSAFE): I just firmly believe that more dialogue is needed in that regard because you are talking about customer confidence and the issue of safety is paramount in everyone's mind and it is having confidence in the fact that the repairer is done to a standard that will not endanger your wife and your children when they take the family car back onto the road after a major structural repair. That is the real issue that I am trying to get at and it is not specifically just for your company.

Mr HAWKER: I am not sure that the insurance industry can do that for the entire smash repair industry when we do not all have relations with the entire smash repair industry. It would become a very high burden and I am not sure why you would only put it on insured customers. What about all the others?

Mr MAGUIRE (STAYSAFE): It does not have to necessarily be insured because there are obviously a lot of repairs that are not under insurance cover—

Mr HAWKER: Comprehensive insurance.

Mr MAGUIRE (STAYSAFE): I am talking about serious repairs where cars are cut and joined.

Mr HAWKER: There is already an accreditation process for smash repairers. They are accredited by government agencies in terms of their capability, so we would like to think that that is a base level of capability. What you are really talking about is: do we need another structural level of accreditation?

Mr MAGUIRE (STAYSAFE): Is that accreditation process sufficient or does it need reinforcing?

Mr McDONALD: It is a fine idea in principle but I think you would find a reluctance on the part of most, certainly professional engineers to give a guarantee as to the quality of someone's work based on a post-repair inspection and again I use the word "cosmetic" view of the car by either looking at it up on a hoist with all the bits on it without having to pull the car apart again and go right over it from scratch. That would add a massive burden of cost.

Mr MAGUIRE (STAYSAFE): Clearly, within the industry there are repairers who carry out substandard work. How do you weed them out and is this part of the process?

Mr HAWKER: One of the points of having our preferred network was to try to select a group of the repairers that we were comfortable with and whose quality of work was meeting our customers standards so that we could actually work with them to give a lifetime guarantee on the repairs so that was a quality choice in terms of that was where we came from.

- 2.52 STAYSAFE believes that both the smash repair and Insurance industry have an obligation to ensure damaged vehicles are repaired to a standard guaranteeing personal and community safety. There is a mutual obligation by both parties involved to guarantee roadworthiness. The potential for higher insurance premiums is a small consideration in light of the overall purpose of such a system. The potential costs involved in unleashing unsafe vehicles on the road clearly outweighs any potential costs associated with giving the option to policy holders of receiving a certificate of roadworthiness for their repaired vehicle.

Motor Traders' Association

- 2.53 The Motor Traders' Association clearly stated their support for requiring motor vehicle insurers giving policy holders the option of requesting a certificate of roadworthiness for their repaired vehicle referring to post-repair inspection practices in the United States:

Mr MAGUIRE (STAYSAFE): There has been a suggestion that owners of motor vehicles that had major structural damage be given the option of gaining a certificate of roadworthiness after a major crash upon demand. What are your thoughts on that?

Mr McCALL: It was said earlier that it is impossible to tell whether it has been repaired properly or not. That is not quite right. You can get a car up after repair and you can certainly tell whether it has been repaired according to manufacturer's specifications. If there are obviously dangerous repairs, of course they are discernible. We still strongly believe that there needs to be an inspection process after the repair. I must say, in the United States that post-accident repair inspections are commonplace, though not here. We believe that that is a necessary part of the process and we will pursue that with those relevant authorities.

Assessment and certification of crashworthiness

Crash testing program to assess safety of motor vehicles after major or structural repairs

RECOMMENDATION 20: The Roads and Traffic Authority, in consultation with the Office of Fair Trading, New South Wales Police, Motor Traders Association, NRMA Motoring & Services, and the motor vehicle insurance industry, initiate a program of crash testing to assess the safety of repaired motor vehicles following major or structural crash damage.

Insurance Australia Group

- 2.54 Insurance Australia Group stated: "Random audits of repairers, as well as post-repair quality inspections, are the most effective means to address." (Insurance Australia Group sub. 50.2, p. 12).
- 2.56 Insurance Australia Group argued that crash testing for the purposes of assessing the safety of repaired motor vehicles following major or structural crash would be problematic because of the lack of guarantee of the representativeness of a test:

Hon. RICK COLLESS (STAYSAFE): Regarding your comments about deciding on whether a deformed vehicle has the part replaced or repaired, what sort of research has gone into making that decision? Is there any crash testing done, for example?

Mr McDONALD: To crash test a repaired vehicle is a simplified solution because you have to decide first of all what is a representative car to crash test. Every car's damage is different. You cannot say you have 100 Camrys all with front-end structural damage; every one of them will be different in some way. So which one do you use as being the most representative one that has gone another half an inch or half an inch less or that sort of thing?

Mr GIBSON (CHAIRMAN): But the outcome should be the same though, should it not?

Mr McDONALD: The outcome should be the same and manufacturers generally—people like Toyota and Ford and Holden publish body repair manuals where they recommend where structural repairs are to take place and they will produce a cutting point, and there is obviously a logical point on the structural part so that it can be replaced. Or the option is to replace the whole structural component back to the car.

2.57 When questioned in relation to Insurance Australia Group's view on the Committee's recommendation for a register of vehicles that have had major structural repairs, the issue of crash testing was explored further. Despite statements questioning the reliability and validity of the crash testing of repaired motor vehicles following major or structural crash damage, witnesses from the insurer also argued that crash testing of repaired vehicles that has taken place in the United States has demonstrated the roadworthiness of these vehicles is commensurate with a new vehicle:

Mr HAWKER: ... the majority of repairs will meet all crash test outcomes. A huge amount of testing of repaired motorcars internationally has demonstrated that a repaired motorcar is just as roadworthy as a brand new car.

....

Mr HAWKER: There is quite a lot of information out of the United States of America about cars that have been crashed by the Highway Safety Institute over there. They have a whole a lot of information on that.

Mr McDONALD: Various people have conducted crash tests on previously repaired cars.

Mr GIBSON (CHAIRMAN): If you have that, will you provide that information to the Committee?

Mr McDONALD: I may be able to obtain some information from one of our overseas counterparts. But the question remains that you cannot pick a representative damage, it's virtually impossible.

2.58 The issue of crash testing for the purposes of assessing the safety of a repaired motor vehicle following major or structural crash damage has generated considerable debate since the STAYSAFE 66 (2005) report. STAYSAFE has received results of such crash tests conducted in Australia and overseas. Due to the extensive nature of these studies and the range of issues requiring discussion, STAYSAFE plans to release a separate report on these studies and their relevance to this inquiry.

Publication of recent crash test results from repaired motor vehicles

RECOMMENDATION 21: The Motor Traders Association, Autoliv Australia, and other groups and organisations involved in the recent crash testing of repaired motor vehicles publish the full data analyses and report on each vehicle tested as soon as possible.

2.59 STAYSAFE has received the data and report of the crash test of a repaired motor vehicle that was conducted in mid-November 2005, and the report of

the test indicated that there is good reason for concern, as there were severe impact forces affecting a driver's lower limbs.

- 2.60 Although the report on the above-mentioned crash test was eventually provided to STAYSAFE this was sometime after the Committee's initial request. STAYSAFE believes that the report was withheld for the purposes of achieving maximum publicity upon its release for inclusion on the current affairs television program *Today Tonight*.

Insurance Australia Group

- 2.61 Insurance Australia Group has stated: "Vehicle was insured with Allianz. IAG has no position on the release of the results." (Insurance Australia Group sub. 50.2, p. 12).

Certificate of crashworthiness

RECOMMENDATION 22: The Roads and Traffic Authority introduce a certificate of crashworthiness for a motor vehicles, applicable after crash damage to motor vehicles involving major repair or structural repairs and modifications.

- 2.62 STAYSAFE has not commented on this recommendation in this report.

Certificate of crashworthiness for vehicles that have had major structural repairs following crash damage

RECOMMENDATION 23: The Roads and Traffic Authority review and report on whether motor vehicles that have had major structural repairs following crash damage should be required to undergo inspection and certification regarding crashworthiness.

- 2.63 STAYSAFE has not commented on this recommendation in this report.

Certificate of crashworthiness for repaired written off vehicles

RECOMMENDATION 24: The Office of Fair Trading and the Roads and Traffic Authority review and report on whether written off motor vehicles that have been subject to major repair should be required to undergo inspection and certification regarding crashworthiness.

- 2.64 STAYSAFE has not commented on this recommendation in this report.

Crashworthiness auditors

RECOMMENDATION 25: The Office of Fair Trading and the Roads and Traffic Authority review and report on whether it is appropriate to consider if persons engaged in crashworthiness assessment—possibly to be termed ‘crashworthiness auditors’—should be required to be licensed, accredited to a relevant peak professional body, be required to enhance their knowledge and skills on a regular basis, and perhaps be independent of the motor vehicle smash repair industry and the motor vehicle insurance sector.

2.65 STAYSAFE has not commented on this recommendation in this report.

Review of safety issues associated with the use of locally and imported recycled parts, imported new parts and other replacement parts in the repair of motor vehicles

Commonwealth review of safety issues associated with imported new parts used in the repair of damaged motor vehicles

RECOMMENDATION 26: The Roads and Traffic Authority, in consultation with the Motor Traders Association, Insurance Council of Australia, and other relevant government, professional and community groups, request the Australian Transport Safety Bureau to review and report on safety issues associated with imported new non-genuine parts, imported parallel parts, and ‘grey imports’ used in the repair of damaged motor vehicles.

2.66 STAYSAFE has not commented on this recommendation in this report.

Commonwealth review of safety issues associated with imported recycled (second hand) parts used in the repair of damaged motor vehicles

RECOMMENDATION 27: The Roads and Traffic Authority, in consultation with the Motor Traders Association, Insurance Council of Australia, and other relevant government, professional and community groups, request the Australian Transport Safety Bureau to review and report on safety issues associated with the use of recycled (second hand) parts sourced from overseas in the repair of damaged motor vehicles.

2.67 STAYSAFE has not commented on this recommendation in this report.

Review of safety issues associated with locally sourced recycled (second hand) parts used in the repair of damaged motor vehicles

RECOMMENDATION 28: The Roads and Traffic Authority, in consultation with the Motor Traders Association, Insurance Council of Australia, and other relevant government, professional and community groups, review and report on safety issues associated with the use of recycled and second hand parts sourced locally in the repair of damaged motor vehicles.

2.68 There was discussion relating to this recommendation in the public hearing:

Mr GIBSON (CHAIRMAN): It must bring up for discussion parallel parts, grey parts and all the rest of it that are being put into motorcars and whether the structural parts should be heated to be repaired or replaced.

Mr McDONALD: You have raised a couple different points there. That structural parts are heated for very minor realignment is an acceptable repair method. Heating and welding parts that have undergone a lot of plastic deformation is not advised and would not be something you would expect to be normal repair practice. With regard to after-market parts—I think you referred to parallel parts—I do not know if I can take this opportunity, but I was listening to some of the evidence at the earlier hearings and there appeared to be a lot of misunderstanding and confusion caused by the different descriptions of parts. I consider there to be new original parts—for example, a Ford part that you would buy from a Ford dealer. What we have traditionally termed "parallel" parts, but we have avoided using that in recent times because of the misinformation and confusion that has gone around about that. That would be, say, a part that you bought for a Ford Laser, which was a Mazda-produced car that you might buy a part from a Mazda dealer. That is what we term "parallel" parts. These are parts by definition that travel a different route from the same source.

Whether these are Mazda parts for a Mazda with a Ford badge, or Toyota parts for a car with a Holden badge, these are parallel parts. Often there is a considerable price difference, more than 100 per cent if you buy a part for a Ford Laser versus a Mazda 323. They are essentially the same part. The other issue is the after-market Taiwanese-type parts, which are direct copies of the original parts. Generally these are usually body parts, not structural. The vast majority of them are things that like front fenders, bumper covers, grilles and easy parts, usually parts that have a lot of volume in them. Otherwise people do not bother tooling up for them. Then there are second-hand or recycled parts, which by definition are the same as the part that is on the car. I have never been able to understand the safety implications of using non-structural second-hand parts.

Mr GIBSON (CHAIRMAN): Is the customer told that you have used second-hand, parallel or grey parts?

Mr McDONALD: That is an operational issue. I will ask David to answer that question.

Mr ISSA: I think we have certain standards that we require from our repairers. I suppose the major issue with a lot of the complexity that Robert's alluding to – and I think that if you sit down and listen to Robert talk, you'll know that it's a very complex issue for the industry – is that once a car has been repaired and painted it is very hard for us to tell where that parts came from, if it is a fender or grille or something like that. So while our commitment is to make sure that the right parts are on the car, but it is a very difficult thing for us to police. It is an industry issue that we need to talk through.

Hon. RICK COLLESS (STAYSAFE): The Committee's main concern was that some of those parts, if they are not genuine parts, might not meet the Australian design rules. There could be different characteristics in the non-genuine parts.

Mr McDONALD: In terms of after-market parts, the only parts that that would pertain to that would be things are like headlamps, where there are a copy headlamps. That is one of the few Australian design rules that apply to vehicle parts. In terms of the car's structure, the other issue would be if there was an imported front section or something that came from another market. That would be the only time that that would affect the behaviour of the car. Body panels certainly would not have any effect on Australian design rules—perhaps an imported door that did not have reinforcement beam. But that is getting very rare these days. It is quite a long since Australian cars were among the few cars to have beams in the doors. Now it is pretty well universal and you would not find that. But that would be only if you bought a complete door.

The general advice in the case of our company is that we do not recommend the use of after-market copy parts. We do, however, because of obvious costs and for environmental reasons, use recycled parts once the car is outside the three-year range. There is always a judgment call on the part of the assessor in the case of a car that is in particularly good condition, but in many cases you will not find acceptable second-hand parts. That is one of the problems, in terms of availability, not quality. Certainly for new cars second-hand or recycled parts are virtually unattainable.

And later....

Mr GIBSON (CHAIRMAN): Whether it be a parallel part or a grey part, or whatever you want to call it. The ones that are coming into the country in container loads on a daily basis are never checked for Australian standards. If they were showing up in crash tests you would be able to say, "These parts just do not meet our standards and so we should not use them."

Mr McDONALD: Could I just add that the parallel parts we are talking about are the same part. They have the same part number and they come in the same box with a stamp on it in most cases. It might have a Ford stamp or a Mazda stamp, but the part number will be the same. It is same part, so it does not affect the compliance of the car.

Mr GIBSON (CHAIRMAN): Are they checked to see whether they are of the same standard as the original Australian part?

Mr HAWKER: They are the same parts.

Mr GIBSON (CHAIRMAN): Overseas I can buy the best watch in the world for \$25. It has the same name and the same parts and all the rest of it but it means absolutely nothing.

Mr McDONALD: Okay. Again, you are talking about the after-market copy parts.

Mr GIBSON (CHAIRMAN): That is right.

Mr McDONALD: We agree. The quality does vary greatly on those parts.

Mr GIBSON (CHAIRMAN): I that were the case, would it not show up as a trend in crash testing?

Mr McDONALD: No, because in the case of after-market copy parts, although we have already stated that it is not our policy to use such parts—

Mr GIBSON (CHAIRMAN): You are the biggest buyer of them in this country. According to Mr Strong you buy more than any other operation in the country.

Mr STRONG: Not of those parts.

Mr McDONALD: Not of those parts. We are the biggest buyer of replacement parts in the industry. In the example I gave you before, a Ford Laser part and a Mazda 323 part goes to the same warehouse in Melbourne. It sits on the same shelf. It has a Ford and a Mazda logo

on the box. When it moves to a Mazda dealer or a Ford dealer, it changes in price by more than 100 per cent. That is what we call a parallel part.

Replacement of seat belts following crashes

RECOMMENDATION 30: The Roads and Traffic Authority, in conjunction with the Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, should:

- (a) review safety issues associated with the replacement of seat belts in motor vehicles that have been involved in a serious crash;*
- (b) ensure seat belt safety issues are included in assessment of crashworthiness of repaired motor vehicles.*

Insurance Australia Group

2.69 Insurance Australia Group commented:

“NRMA Insurance, RTA and Crashlab have conducted an extensive study on the need to replace seatbelts following a collision.”

“No need as legislation already in place. Damaged seatbelts are already replaced (as per guidelines to assessors).” (Insurance Australia Group sub. 50.2, p. 13)

Motor Traders Association

2.70 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association indicated that a meeting with the Roads and Traffic Authority was planned. The Association did not advise of the outcomes (if any) of the remaining meeting requests.

Replacement of air bags following crashes

RECOMMENDATION 31: The Roads and Traffic Authority, in conjunction with the Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, should:

- (a) review safety issues associated with the replacement of air bags in motor vehicles that have been involved in a serious crash;*
- (b) ensure air bag safety issues are included in assessment of crashworthiness of repaired motor vehicles.*

Insurance Australia Group

2.71 Insurance Australia Group commented:

“Safety imperative not established by report.”

“Airbags require replacement in the event of having been deployed, or where vehicle’s computer components or wiring are damaged.”

“Requirement for replacement is specified by manufacturer and if damage inadequately repaired, warning lights show which can only be switched off by an authorised dealer using factory electronic analysis equipment.” (Insurance Australia Group sub. 50.2, p. 14)

Motor Traders Association

2.72 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association indicated that a meeting with the Roads and Traffic Authority was planned. The Association did not advise of the outcomes (if any) of the remaining meeting requests.

Reporting of consumer complaints and other safety issues relating to smash repairers and motor vehicle insurers in New South Wales

Review the role of the Insurance Ombudsman Service in resolving motor vehicle insurance matters in New South Wales

RECOMMENDATION 32: The Minister for Fair Trading assess the role of the Insurance Ombudsman Service in following up consumer complaints relating to smash repairers and motor vehicle insurers in New South Wales.

2.73 STAYSAFE has not commented on this recommendation in this report.

Reporting of sub-standard repairs

RECOMMENDATION 33: The Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, review and report on the information insurance companies should be required to provide to the Motor Vehicle Repair Industry Authority in the case of repairs that are sub-standard.

Insurance Australia Group

2.74 Insurance Australia Group commented:

“Safety imperative not established by report.” (Insurance Australia Group sub. 50.2, p. 14)

Motor Traders Association

2.75 The Motor Traders Association has advised STAYSAFE that they have written to the relevant parties requesting a meeting to discuss this recommendation. The Association did not advise of the outcomes (if any) of these requests.

2.76 In response to this recommendation, the Motor Traders Association advised that:

“as of 1 January 2006, the Association has forwarded all consumer complaints, regardless whether repairer was an MTA Member, the Office of Fair Trading and the Motor Vehicle Repair Industry Authority” (Motor Traders Association sub. 70.11)

Mandatory notification of removal or disqualification of smash repairer from a Preferred Repairer Scheme for safety reasons

RECOMMENDATION 34: The Minister for Fair Trading examine whether a motor vehicle insurer who removes or disqualifies a smash repairer from a Preferred Repairer Scheme for safety reasons should be subject to a mandatory requirement to notify the Motor Vehicle Repair Industry Authority.

2.77 STAYSAFE has not commented on this recommendation in this report.

Review the role of the Motor Vehicle Review Industry Authority in resolving complaints about motor vehicle smash repair matters in New South Wales

RECOMMENDATION 35: The Office of Fair Trading review the role of the Motor Vehicle Review Industry Authority in following up consumer complaints relating to smash repairers, and, in particular, consider mandatory notification of complaints being dealt with the an insurer's internal dispute resolution mechanisms.

2.78 STAYSAFE has not commented on this recommendation in this report.

Community education

Community education regarding the motor vehicle smash repair industry

RECOMMENDATION 36: The Roads and Traffic Authority, Motor Vehicle Repair Industry Authority, and New South Wales Police develop and publish comprehensive educational materials for the general community that clearly outline the issues associated with the motor vehicle smash repair industry, including:

- the identification of motor vehicles and their component parts;*
- terminology and processes that may be associated with repairs to motor vehicles that have been damaged or written off;*
- rebirthing of motor vehicles;*
- the roles of loss assessors, motor vehicle insurers, smash repairers, etc.; and*
- regulatory and complaint mechanisms.*

2.79 STAYSAFE has not commented on this recommendation in this report.

Compliance, licensing and certification arrangements for motor vehicle smash repairers

Review of Motor Vehicle Repair Industry Authority's compliance program for motor vehicle smash repair industry

RECOMMENDATION 37: The Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, review and report on the efficacy of the Motor Vehicle Repair Industry Authority's ongoing compliance program that checks businesses and tradespeople are licensed and carrying out quality work with specific regard to motor vehicle smash repairs.

2.80 STAYSAFE has not commented on this recommendation in this report.

Motor vehicle smash repairers to be assessed and certified for specialised repair capability for different types or motor vehicles

RECOMMENDATION 38: The Motor Vehicle Repair Industry Authority, in consultation with Motor Traders Association and the motor vehicle insurance sector, assess the feasibility of developing an industry-wide assessment and certification system to ensure that motor vehicle smash repairers are equipped and capable to deal with specialised technical requirements for repair of different types of motor vehicles.

2.81 STAYSAFE has not commented on this recommendation in this report.

Review of penalties for non-compliance with motor vehicle smash repair industry licensing requirements

RECOMMENDATION 39: The Motor Vehicle Repair Industry Authority, Motor Traders Association and the motor vehicle insurance sector, review and report on the penalties available under the Motor Vehicle Repair Industry Authority's ongoing compliance program that checks businesses and tradespeople are licensed and carrying out quality work with specific regard to motor vehicle smash repairs.

2.82 STAYSAFE has not commented on this recommendation in this report.

Remaining issues

Road Safety 2010

RECOMMENDATION 40: The Roads and Traffic Authority, after consultation with the Motor Traders Association, Insurance Council of Australia, NRMA Motoring & Services, and other relevant government, professional and community groups, ensure that the current Road Safety 2010 strategy recognises safety issues regarding materials, structures and components in motor vehicles from initial registration for use on New South Wales roads through to the end-of-vehicle life.

2.83 STAYSAFE has not commented on this recommendation in this report.

Legal liability of motor vehicle smash repairers and motor vehicle insurers operating Preferred Repairer Schemes

RECOMMENDATION 41: The Office of Fair Trading clarify, review and report on the legal liability of motor vehicle smash repairers and motor vehicle insurers operating Preferred Repairer Schemes in the case of repairs that are sub-standard.

Insurance Australia Group

2.84 Insurance Australia Group commented:

“IAG concerned that review will result in insurers being forced to accept liability whenever a repair method is specified, even if resulting sub-standard repairs are a consequence of poor

workmanship on the part of a repairer.” (Insurance Australia Group sub. 50.2, p. 16)

“Main existence of a direction as to repair method should not absolve a repairer of their legal responsibilities.” (Insurance Australia Group sub. 50.2, p. 16)

Anti-steering legislation

RECOMMENDATION 43: The Minister for Fair Trading review the response of Insurance Australia Group to the findings and recommendations of inquiries into the operation of its Preferred Repairer Scheme, and consider the introduction of anti-steering legislation into New South Wales to open up competition by preventing motor vehicle insurers from closing off access to repair work by the majority of smash repairers.

Insurance Australia Group

2.85 Insurance Australia Group commented:

“Anti-steering legislation would be contrary to findings of the PC inquiry.”

“Would prevent current practice of insurer oversight of smash repair process, which ensures repairs are of the highest standard.”

“No evidence suggests anti-steering laws will improve safety. Likely to reduce consumer protection.”

Motor Traders' Association

2.86 In response to this recommendation, the Motor Traders Association advised:
“as of 1 January 2006, the Association has forwarded all consumer complaints, regardless whether repairer was an MTA Member, the Office of Fair Trading and the Motor Vehicle Repair Industry Authority” (Motor Traders Association sub. 70.11).

2.87 The Association also advised that the “MTA has met with several MPs and sent the Lower House information to explain the current situation and anti-steering legislation” (Motor Traders Association sub. 70.11).

2.88 Despite this recommendation specifying that the Minister for Fair Trading should consider the introduction of anti-steering legislation, the Motor Traders' Association has continued to pursue its own anti-steering agenda since the release of STAYSAFE's report in December 2005. From the Association's perspective, anti-steering legislation was understood as the only solution to allow the smash repair industry to operate in an open and competitive market.

STAYSAFE asked the Association to spell out their rationale for pursuing anti-steering legislation:

- 2.89 Despite advocating anti-steering legislation, the Motor Traders' Association did state that the reinstatement of customer choice would also address the same set of issues, providing that customer choice was 'honest and transparent' however concerns were expressed about Insurance Australia Group's ability to be faithful to its promise.

STAYSAFE to review response to findings and recommendations

RECOMMENDATION 44: STAYSAFE re-examine the Insurance Australia Group Preferred Repairer Scheme within 6-12 months to review its motor vehicle damage assessment and repair system, and to examine the motor vehicle insurance sector's response to the findings and recommendations in this report.

- 2.90 STAYSAFE has re-examined the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme.

REFERENCES

Thomas, G. (2006). 'Review of the Outcomes of IAG's Improvements to Web based Repair Management' Report to the Minister for Fair Trading, the Hon. Diane Beamer MP, of an independent investigation of Insurance Australia Group's web-based repair management system. Sydney, NSW: Office of Fair Trading.

STAYSAFE 52 (2002). xxxx. Third report of the Joint Standing Committee on Road Safety of the 52nd Parliament. Sydney, NSW: Parliament of New South Wales.

STAYSAFE 66 (2005). Repairing to a price, not a standard: Report of an inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and its implications for roadworthiness, crashworthiness, and road safety. Ninth report of the Joint Standing Committee on Road Safety of the 53rd Parliament. Sydney, NSW: Parliament of New South Wales.

WITNESSES WHO TESTIFIED AT THE PUBLIC
HEARING BEFORE THE STAYSAFE COMMITTEE
ON MONDAY 27 MARCH 2006 TO REVIEW
PROGRESS IN IMPLEMENTING THE FINDINGS
AND RECOMMENDATIONS FOR MOTOR VEHICLE
SMASH REPAIRS UNDER THE INSURANCE
AUSTRALIA GROUP (NRMA INSURANCE)
PREFERRED REPAIRER SCHEME

Monday 27 March 2006

Mr James Alexander Strong, Insurance Australia Group

Mr Michael Hawker, Insurance Australia Group

Mr David Issa, Insurance Australia Group

Mr Robert McDonald, Insurance Australia Group

Mr James McCall, Motor Traders Association

Mr Gregory Coli, Motor Traders Association

Appendix A—

Thomas (2006). Review of the outcomes of IAG's improvements to web based repair management'. Further report for the Minister for Fair Trading on Insurance Australia Group's web-based repair management system

Context

The repairers visited in this review covered the following Care & Repair Centres of Rosebery, Taren Pt., Riverwood, Liverpool, Penrith, Blacktown, Smithfield, South Strathfield and East Chatswood. Also visited was the Riverwood Care & Repair Centre.

It was noted that there was a limited number of vehicles on the WRM, less than 10% of the previous review.

Key Points

- All vehicles examined on the WRM had sustained minor damage only (section 1)
- No reports of unsafe vehicles being driven from Care & Repair Centres. (section 1)
- In some areas, images were still not clear (dark or blurry)
- Again in those areas, poor images made it very difficult to show the full extent of damage (too dark or reflections on vehicle (section 2)
- In a number of areas, repairers were happy with the improved changes to the WRM. (section 5)
- In these areas, repairers were involved in the working parties. (section 6)
- The threat of the TAF was applied to a number of repairers. (section 4)
- Competition between repairers, has led to cost cutting to win tenders. (section 7)
- An increase in rectification of poorly repaired vehicles (section 8).

Findings

1. All vehicles examined on the WRM had sustained minor damage only. If the possibility of secondary damage was evident, then this was noted on "Report". No repairer presented evidence of unsafe vehicles being driven from the Care & Repair centres to repairers prior to repairs being carried out.
2. Images:
 - 2.1 Clarity: the majority of images were clear and showing relevant detail. A small number were still either too "dark" or "blurry".
 - 2.2 Ability to show damage: this varied greatly between centres. With some centres taking the correct number and angle of images required for each damaged panel, (eg. Face on, each side) and others only taking one image.
 - 2.3 The eastern and southern centres had good images taken from various angles, along with signage and stickers to show damage.
 - 2.4 The western and northern centres had a number of poor images with "reflection" or very "dark", making it very difficult to determine the extent of damage to the vehicle.
 - 2.5 Images of trims & auxiliary fittings are shown by some centres and assessors. But this is not consistent from all centres.
 - 2.6 There was also a number of wasted images posted on the WRM, (not relevant to the repairer). Eg. "speedometer", "other angles of the vehicle", "old damage" (not near the repair area), etc.
3. Scope of Works:
 - 3.1 The scope of works still remains quite varied between assessors/centres. Most scopes only listed "parts & repairs", were as some did list "remove & replace" and 'paint" as well.
 - 3.2 The scopes still lack comprehensive detail and are not consistent. As well as inconsistent wording "alternative parts", "nec items", etc
4. Tender Adjustment Factor:
 - 4.1 All repairers stated that the TAF has not been applied, but a number had been threatened with the TAF. Some were given the option of removing the variation from their account, (at their cost) or have the possibility of the TAF being applied. Others stood their ground and the TAF was not applied. Eg. (a guard that was tendered as a repair, after stripping was found to have excess damage requiring a new panel). Other parts not noted on scope or in images were questioned.
5. Assessor training:
 - 5.1 Consistency in images and scopes was evident in only a small number centres.
 - 5.2 The repairers in these areas are happy with the assessor training and changes to the WRM.

6. Care & Repair Centres:

- 6.1 At the Riverwood centre I was shown the training curriculum for assessors on the WRM. (which is currently underway).
- 6.2 This included the use of cameras and digital imaging.
- 6.3 The number and angles of images to correctly show the damage on the vehicle.
 - (a) At least three images of each panel, "each side & face on"
 - (b) Images of vehicle, showing size and extent of damage.
 - (c) Markings and stickers on damaged areas.
 - (d) Additional images, showing trims, under bonnet/boot fittings, quarter/turret and cant rail areas for blends, etc.
- 6.4 Also the "scope of works" and what items repairers require listed, "R& R's", "repairs", "parts", "paint" and sublet/miscellaneous items.
- 6.5 These changes and training were put together from the results of feedback from the repairer working parties that are currently being held in various areas.
- 6.6 This training and resulting change were evident in the results from a number of centres, (Rosebery, Taren Pt, Riverwood), etc. But has shown that it has not been totally completed in the other centres.

7. I was shown the draft "Procedures for lowballing". These procedures were again put together from the repairers' working parties. These procedures are a much fairer method to deal with "lowballing" than the TAF.

8. Competition in some areas, has led to some businesses cost cutting, to win tenders. And a small number of repairers noted an increase of rectifications being carried out on previous poorly repaired vehicles.

Appendix B—
The motor vehicle insurance and repair industry
code of conduct, 2006

Motor Vehicle Insurance

and

Repair Industry

Code of Conduct

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PREAMBLE

It is in the interests of government, Insurers, policy holders and Repairers to promote the efficient operation of, and consumer confidence in, professional and competitive motor vehicle insurance and repair industries in Australia.

The economic activity created by a competitive motor vehicle insurance market and repair industry market will create and maintain skilled employment, efficient customer service and viable and cost effective motor vehicle repair and insurance industries.

The content of the Code and matters covered by it have been guided by the Government's response to the Productivity Commission and the Terms of Reference, set by the Australian Government, for the Smash Repair and Insurance Industry Implementation Taskforce. Repairers and Insurers acknowledge that for the purposes of promoting an efficient and competitive industry:

- (a) In recognition of Repairers right to freely structure their business arrangements, this Code provides for minimum, industry-wide, standards in matters such as:
 - Transparency, disclosure and fairness in relation to Insurers' NSR schemes;
 - Transparency, disclosure and fairness in relation to quotation processes, times and rates, Repairer choice and use of parts;
 - Responsibility for quality and safety, and warranties;
 - Minimum terms of payment; and
 - An independent external dispute resolution mechanism.

- (b) In recognition of Insurers' right to freely structure their business arrangements, and as required by the Government Response to the Productivity Commission recommendations, there has been no attempt to specify, on an industry-wide basis, matters such as:
 - minimum hourly rates or prices;
 - 'standard' hours for repair jobs;
 - types of parts to be used;
 - industry-wide PSR selection criteria and/or weightings for PSR criteria;
 - compulsory choice of Repairer;
 - requirements to spread work among Repairers; and
 - particular conditions of guarantees.

At Attachment A are copies of the Australian Government's response to the Productivity Commission's report and the Terms of Reference for the Smash Repair and Insurance Industry Implementation Taskforce setting out the arrangements for the development of the Code, which form part of this Code and should be considered in any interpretation and application of the Code.

1 PRINCIPLES OF THE CODE

This Code is intended to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies based on mutual respect and open communication.

Insurers and Repairers agree to observe high standards of honesty, integrity and good faith in conducting their business with each other and in the provision of services to claimants.

The Code will specify standards of fair-trading, process and transparency in the relationship between Insurers and Repairers. There should not be any interference with the commercial relationships between individual Insurers and Repairers, other than as provided in this Code and in accordance with the principles of the Code.

The Code will provide efficient, accessible and transparent dispute resolution processes for issues arising between individual Repairers and individual Insurers.

Insurers and Repairers agree they have a responsibility to ensure vehicle repairs are authorised and carried out in a professional manner and to ensure that the safety, structural integrity, presentation and utility of the vehicle are restored. In doing so:

1.1 Insurers will authorise repairs covered by the policy with the objective of:

- (a) restoring the safety, structural integrity, presentation and utility of the motor vehicle;
- (b) complying with relevant Australian Government, state or territory legislation; and
- (c) fulfilling their obligations to the policyholder in accordance with the provisions of the policy and the relevant provisions of the General Insurance Code of Practice relating to insurance claims (annexure 3).

1.2 Insurers will not require Repairers to carry out repairs that:

- (a) are not in accordance with:
 - i) the documented manufacturers' technical specifications including those supplied by other industry recognised agencies or authorities; or
 - ii) any lawful mandatory specifications and/or standards; or
- (b) use methods that may compromise vehicle warranty conditions; or
- (c) in the absence of (a) and (b) are not in accordance with accepted industry standards and practice,

while having regard to the age and condition of the motor vehicle.

1.3 Repairers will carry out repairs with the objective of:

- (a) restoring the safety, structural integrity presentation and utility of the motor vehicle;
- (b) complying with relevant Australian Government, state and territory legislation; and
- (c) fulfilling their obligations to the Insurer under provisions of applicable contracts of repair.

1.4 Repairers will carry out repairs that:

- (a) are in accordance with:
 - (i) the documented manufacturers technical specifications including those supplied by other industry recognised agencies or authorities; or
 - (ii) any lawful mandatory specifications and/or standards; or
- (b) use methods that are consistent with vehicle warranty conditions; or
- (c) in the absence of (a) and (b) are in accordance with accepted industry standards and practice,

while having regard to the age and condition of the motor vehicle.

2 SCOPE

This is a voluntary Code and applies to Insurers and to Repairers or repairer representative organisations that are signatories to the Code. Signatories to the Code agree to be bound by the Code in their dealings with all Code participants within the industry. Signatories to the Code agree that they will promote the Code and encourage non-signatory Repairers and Insurers to become signatories to the Code.

This Code does not give rise to any legal relationship between Insurers and Repairers, other than the obligation to participate in the dispute resolution processes as set out in this Code.

The provisions of this Code are subject to all applicable Australian Government, state and territory laws and all rights and obligations arising under common law.

2.1 Signatories to the Code

A person may become a signatory to this Code by lodging a Code Signatory Notification Form with the CAC.

A person ceases to be a signatory to the Code by lodging a written notice advising the CAC they no longer wish to be a signatory to the Code.

3. DEFINITIONS

In this Code:

"Applicant" means the person who starts the EDR process set out in sub-clause 11.3 of the Code.

"Approved Assessor Course" means a course recognised by the CAC.

"Assessor" means an employee, assessing contractor or agent of an Insurer, who is engaged to assess Motor Vehicle accident damage and/or negotiate Repair Estimates between Insurers and Repairers.

"Business ownership structure" means the principal owners of the business, or parent entity, which includes any other person taking a financial interest in the business ownership.

"CAC" means the Code Administration Committee established in accordance with sub-clause 12.1 of this Code.

"Claimant" means a person covered by a Policy or a person who has a claim against a person covered by a Policy.

"Code" means the voluntary national Motor Vehicle Insurance and Repair Industry Code as agreed by the Smash Repair and Insurance Industry Implementation Taskforce on 23 May 2006 and any changes as agreed from time to time by the Code Administration Committee.

"Complaint Contact" means a person appointed by the Insurer as its designated Complaint Contact for handling and settling disputes under clause 10 of this Code.

"EDR" means External Dispute Resolution referred to in clause 11.3 of this Code.

"ICA" means the Insurance Council of Australia Limited.

"IDR" means Internal Dispute Resolution established by each of the Insurers under clause 11.2 of this Code.

"Industry" means the Motor Vehicle insurance and repair industries in Australia.

"Insurer" means a member of the ICA or any other person who is in the business of insuring Motor Vehicles in respect of property damage and which, in the course of the business, engages or authorises Repairers to perform Repairs to Motor Vehicles.

"Mediator" means an independent person who is appointed to facilitate discussion between the parties to a dispute to assist them to find a mutually acceptable resolution to their differences.

"Motor Vehicle" means a motor vehicle for which a motor vehicle insurance Policy is held.

"MTAA" means the Motor Trades Association of Australia.

“NSR” means a network smash repairer being a Repairer promoted by an Insurer under an accreditation scheme operated by the Insurer and who is licensed to use the Insurer’s insignia or trademarks.

“Parties” means the applicant and the respondent to a dispute arising under clauses 10 and 11 of this Code.

“PDS” means a product disclosure statement required to be issued by an Insurer under Chapter 7 of the Corporations Act 2001.

“Person” means an individual or entity within the motor vehicle insurance and repair industry.

“Policy” means a motor vehicle insurance policy over a motor vehicle issued by an insurance company, who is a signatory to the Code.

“Policyholder” means a person (natural or body corporate) who holds a policy for a Motor Vehicle with an Insurer.

“Presentation” means the visual appearance of the repair work performed on the Motor Vehicle.

“Publicly Available” includes being published on the public pages of Insurers’ websites.

“Repair” means any work done by a Repairer to repair a motor vehicle or any component, system or part, where the work is covered by a motor vehicle insurance policy and where a claim is or will be made by a claimant including but not limited to:

- (a) dismantling and assembling;
- (b) part and component replacement, adjustment, modification, installation and fitting;
and
- (c) painting.

“Repairer” means any person lawfully engaged in the business of effecting Repairs to Motor Vehicles.

“Repairer Representative Organisation” means the Motor Trades Association of Australia, any of its member associations or any other trade association representing Repairers.

“Respondent” means the person with whom the Applicant has a dispute.

“Serious Criminal Offence” means any criminal offence under any law of the Australian Government or any state or territory government for which a person would be liable on first conviction to imprisonment for a period of not less than 2 years.

“Signatories to the Code” means those Insurers, Repairers and Repairer Representatives Organisations who are listed on the Code Register of Signatories and who have agreed to be bound by the provisions of this Code and who have not ceased to be bound by the Code.

“Sub-let Repairer” means a person or business, other than the Repairer, who carries out Repairs on a vehicle at the request of, or under contract with, the Insurer.

“Sub-let Repairs” means Repairs carried out by a Sub-let Repairer.

“Upfront” means prominent, obvious and referred to in a table of contents.

4. INSURER AND REPAIRER RELATIONS

4.1 Repairers

In their dealings with Insurers in relation to repairs, Repairers will:

- (a) prepare estimates that provide for an appropriate scope of repairs, ensuring that all repairs are carried out in a safe, ethical, timely and professional manner and in accordance with the method of repair and the parts specified by the Insurer;
- (b) not dismantle a vehicle for the purpose of preparing an estimate unless requested or authorised to do so by the Insurer; and
- (c) not engage in practices designed to hinder or prevent the Insurer or claimant seeking to obtain an alternative quotation.

4.2 Insurers

In their dealings with Repairers in relation to repair work, Insurers will:

- (a) provide Repairers with relevant details relating to the claim that the Repairer requires in order to prepare an estimate or undertake the repair including details of sublet repairs and payments by customers including any excess and contributions;
- (b) not refuse to consider an estimate on unreasonable or capricious grounds;
- (c) pay the agreed amount for all work completed, that has been authorised or requested by the Insurer;
- (d) ensure all assessors engaged by the Insurer are:
 - (i) appropriately trained and have appropriate technical experience;
 - (ii) have successfully completed an approved assessors course; or
 - (iii) have not less than five years experience as an insurance (motor) assessor;
- (e) not remove a motor vehicle from a Repairer's premises without notifying the Repairer in advance and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the vehicle and in compliance with relevant legislation; and
- (f) not knowingly ask claimants to drive unsafe motor vehicles for the purposes of obtaining alternative estimates.

5. NETWORK SMASH REPAIRER SCHEMES

5.1 Notification of Opportunities to Apply for NSR Status

- (a) Insurers that have Network Smash Repairer (NSR) schemes will document and publish criteria for membership of those schemes, including information relating to the structure of the scheme.
- (b) Insurers will provide mechanisms for Repairers to register their interest in joining an NSR scheme. These mechanisms will be documented and publicly available.
- (c) Insurers will confirm a Repairer's registration of interest in writing and provide details of the criteria used by the Insurer to select a member of an NSR scheme.
- (d) Insurers will provide Repairers with a fourteen (14) day 'cooling off' period for consideration of an NSR contract after it is executed by the Repairer.

5.2 Disclosure of information on NSR schemes

- (a) Insurers will provide Repairers who are members of an NSR scheme with:
 - (i) the criteria/requirements for retaining NSR status;
 - (ii) the circumstances under which a Repairer's status within the NSR scheme can be changed; and
 - (iii) the circumstances under which a NSR status can be withdrawn, suspended or removed.

5.3 Term of Agreement

All NSR scheme agreements must be for a fair and reasonable term of not less than three (3) years, giving consideration to the time and investment a Repairer has had to make to gain and/or maintain accreditation under an NSR scheme.

5.4 Extension of Network Repairer Status

In the event of any change in the business ownership structure of a Repairer who is a member of an NSR scheme, the Repairer must advise the Insurer and provided the Insurer's existing NSR selection criteria are maintained and performance standards and probity and prudential concerns are met, the Insurer will provide the business NSR status for the remainder of the term of the original NSR agreement. If not, the membership may be terminated notwithstanding clause 5.

5.5 Termination of NSR Agreement – breach by Repairer

- (a) This clause applies if:
 - (i) a Repairer breaches an NSR agreement; and
 - (ii) the Insurer proposes to terminate the NSR agreement, and sub-clause 5.8 does not apply.
- (b) The Insurer must:
 - (i) give to the Repairer reasonable notice that the Insurer proposes to terminate the agreement because of the breach;
 - (ii) tell the Repairer what the Insurer requires to be done to remedy the breach; and
 - (iii) allow the Repairer a reasonable time to remedy the breach.
- (c) For sub-clause 5.5(b)(iii), the Insurer does not have to allow more than thirty (30) days.
- (d) If the breach is remedied in accordance with sub-clauses 5.5(b)(ii) and 5.5(b)(iii), the Insurer cannot terminate the agreement because of that breach, unless the Repairer has in the previous three years been in breach and has been advised in writing that any further serious breach will result in the termination of the agreement.

5.6 Termination of NSR Agreement – based on performance criteria

An Insurer may only terminate an NSR agreement based on a Repairer failing to meet performance criteria or standards, if:

- (a) the performance criteria or standards and the consequences of failure to meet such performance criteria or standards were disclosed to the Repairer prior to entering into the agreement;
- (b) the Repairer fails to meet those performance criteria or standards;
- (c) the breach by the Repairer was subject to written notice by the Insurer to the Repairer advising of the detail of the breach and the Insurer provided the Repairer with a reasonable period of time in which to meet the performance criteria or standards; and
- (d) the Insurer has treated the Repairer fairly in relation to the application and enforcement of performance criteria and standards.

5.7 Termination of NSR Agreement – no breach by Repairer

Other than at the expiry of the term of agreement, where a Repairer is not in breach of an NSR scheme agreement, an Insurer may not unreasonably terminate the agreement unless:

- (a) the Insurer provides at least twelve (12) months notice of its intention to terminate the agreement; or
- (b) the Repairer consents in writing to terminate the agreement earlier.

5.8 Termination of NSR Agreement – special circumstances

Insurers do not have to comply with sub-clauses 5.5, 5.6, or 5.7 if a Repairer:

- (a) no longer holds a licence that the Repairer must hold to carry on its repair business;
- (b) becomes a bankrupt, insolvent or under external administration;
- (c) is convicted of a serious criminal offence;
- (d) is fraudulent in connection with the operation of the repair business or engages in serious misconduct; or
- (e) agrees to terminate the NSR Agreement.

6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS

- 6.1** Where competitive estimates are sought, Insurers will ensure the estimation process is fair and transparent and as far as is practicable, that estimates are comprehensive, complete and inclusive of all obvious damage.
- 6.2** The parties acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates:
- (a) Insurers will state clearly the estimation methodology to be applied; and
 - (b) Repairers in their estimation methodology may separately cost paint, parts, significant consumables and mandatory government environmental levies in so far as they apply to a repair.
- 6.3** Without limiting Insurers' and Repairers' rights to fair and transparent negotiation, the Insurer may not unreasonably or arbitrarily alter the Repairers estimate unless the Insurer insists on changing the repair process, parts or materials to be used (subject to sub-clause 7.4).
- 6.4** While Insurers may enter into commercial arrangements with Repairers that specify performance targets, Insurers will not unduly influence any Repairer to submit estimates on the basis of inducements of further work.

7. REPAIR WARRANTIES

- 7.1** An Insurer will provide details in writing to Repairers of the warranty cover the Insurer provides to insureds, including the Insurer's responsibilities under lifetime warranties.
- 7.2** Unless required by law, Repairers will provide Insurers with a warranty in respect of their workmanship for a period of three (3) years from the date of repair unless a longer period is offered.
- 7.3** Repairers shall only be required to provide a guarantee for parts or paint to the extent that the manufacturer, distributor, supplier or importer of the parts or paint is so liable under an express warranty or under the law, other than to the extent that the quality of the repair arising from the use of the parts or paint arises from faulty workmanship.
- 7.4** If repairs are carried out under a contract between the Insurer and a Repairer, where an Insurer requires a Repairer to use a repair method or part that differs from that recommended by the Repairer, and the Insurer and Repairer are unable to reach agreement to that change, the Insurer will provide such a requirement in writing.
- 7.5** Where the Insurer provides a written requirement under sub-clause 7.4 the Insurer agrees to pay the direct loss or liability incurred by the Repairer by reason of a quality, structural, presentation or safety defect caused by complying with the requirement. The Repairer must immediately notify the Insurer of any claim made against the Repairer that may give rise to a claim under this sub-clause. The Insurer is not liable to pay any loss or liability incurred by the Repairer to the extent that the loss or liability arises from faulty workmanship.
- 7.6** Where issues of workmanship arise, and where practicable, including taking into account customer preferences, the Repairer concerned must be offered the first option to effect required rectification.
- 7.7** Where repairs are undertaken by sub-let repairers at the Insurer's direction the Insurer will take full responsibility for any claim that may arise from the repair by the sub-let repairer and reimburse any reasonable costs incurred by the principal Repairer as a result of an Insurer's nominated sub-let repairer not completing the work as authorised in the allocated time.

8. PAYMENT TERMS

- 8.1** An Insurer's maximum payment terms for repair invoices should not exceed thirty (30) days from receipt of invoice by the Insurer or authorised assessor or agent.
- 8.2** Where the price, work or documentation is disputed, payment of the undisputed component will be paid in accordance with the payment terms of sub-clause 8.1.
- 8.3** Insurers will disclose alternative payment arrangements, if any, between Repairers in and those not in the Insurer's NSR scheme.

9. DISCLOSURE OBLIGATIONS

- 9.1** Insurers will clearly state, in unambiguous and plain language, upfront in their Product Disclosure Statements, their policy in relation to choice of Repairer.
- 9.2** Insurers will disclose in their Product Disclosure Statements their policy relating to the use of new, non genuine and recycled parts, sub-let repairs and guarantees and warranties.
- 9.3** Insurers will not make misleading or deceptive statements about the quality, capability or timeliness of Repairers that are not members of an Insurer's NSR scheme;
- 9.4** Repairers will not make misleading or deceptive statements about the quality, safety or timeliness of repairs based on who the Insurer is or the approach the Insurer uses to allocate repairs or manage claims; and
- 9.5** Sub-clauses 9.1, 9.3 and 9.4 also apply to telephone enquiries and sales.

10. REPAIR DISPUTE RESOLUTION

This clause applies to disputes that arise prior to the commencement or completion of repair.

10.1 Matters for dispute resolution

- (a) Where disputes arise relating to the appropriate repair and paint method and where it is believed the safety, structural integrity, presentation or utility of the vehicle will be compromised by the proposed repair method, and the dispute cannot be resolved under clauses 1 and 7, the provisions of clause 10 apply.
- (b) Where there are repair disputes which arise prior to the completion of repairs to a motor vehicle other than those described in 10.1(a) and 10.1(c) the parties will at first instance use the provisions of clause 10. This does not prevent either party subsequently pursuing the matter under the provisions of clause 11 once the vehicle has been repaired.
- (c) Disputes relating to the amount to be paid for repairs, or differences of opinion as to the preferred repair method, other than those outlined in sub-clause 10.1(a), are matters for individual Repairer/Assessor negotiation and cannot be disputed under the provisions of clauses 10 or 11.
- (d) Clause 11 will not apply to disputes covered by sub-clauses 10.1(a) and 10.1(c).

10.2 Notification of Dispute

In the event of a dispute under this clause 10, the Repairer must notify the Insurer's complaint contact, providing full details of the dispute and supporting evidence of the concern and the redress sought by the complainant.

10.3 Dispute Resolution Procedure

- (a) Upon notification of a dispute, the Insurer will fully investigate the issue, and the supporting evidence provided by the Repairer and will within two business days make a determination.
- (b) As part of this process, the Insurer will consider the relevant information, may inspect the motor vehicle and will discuss the dispute with the Repairer.
- (c) If the Repairer disagrees with the determination of the Insurer the Repairer retains the right to refuse to carry out the repairs and in that case the Insurer may transfer the vehicle to another Repairer.
- (d) The Insurer agrees to report to the CAC on an annual basis detailing the number, nature and outcome of disputes raised under clause 10.

11. DISPUTE RESOLUTION PROCESS

This clause applies to disputes arising from clauses 4 to 9 of the Code and disputes over contractual arrangements.

11.1 Application and Principles

- (a) The procedure in this section applies to all disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature but does not apply to disputes which are described in sub-clause 10.1(a) and 10.1(c).
- (b) Insurers and Repairers agree that disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature, should be resolved promptly, transparently and fairly.

11.2 Internal Dispute Resolution

- (a) Each Insurer will establish an internal dispute resolution (IDR) mechanism that provides for the prompt, transparent and fair resolution of disputes.
- (b) All disputes should in the first instance be directed through Insurers' IDR mechanisms.
- (c) Insurers will provide to the Repairer a written acknowledgement of the complaint within five business days. Within a further 10 business days, Repairers and Insurers will conclude the IDR process, unless otherwise agreed to by both parties.
- (d) If the Repairer disagrees with the outcome of an IDR process, they can elevate the dispute to External Dispute Resolution (EDR).

11.3 External Dispute Resolution

- (a) To commence an EDR action under the Code, the applicant must lodge a notice of dispute with the CAC or its nominee and the respondent, providing the following information:
 - (i) the nature of the dispute;
 - (ii) what outcome the applicant wants; and
 - (iii) what action the applicant thinks will settle the dispute.
- (b) The applicant and the respondent may then either agree on a mediator, or if the parties cannot agree on a mediator within 2 business days, they must

request the CAC or its nominee to appoint a mediator. The mediator should be appointed within 2 business days.

- (c) Subject to sub-clause 11.3(e), the Mediator may decide the time and place for the conduct of the mediation.
- (d) Any face-to-face mediation under this Code must be conducted in the state or territory in which the repairs took place and within a reasonable distance of the Repairer's premises, unless otherwise agreed by the parties.
- (e) The parties participating in the mediation should try to resolve the dispute within 15 business days of the notification of the dispute, unless otherwise agreed to by both parties.
- (f) Those participating in the mediation must have the authority to enter into an agreement to settle the dispute.
- (g) If the mediation does not result in an outcome acceptable to both the applicant and the respondent, or the dispute proves incapable of resolution by mediation, the Mediator will provide a written statement to the applicant and the respondent setting out:
 - (i) the parties to the dispute;
 - (ii) an outline of the dispute; and
 - (iii) a list of unresolved issues;
- (h) Any statement issued under sub-clause 11.3(g), must remain confidential between the parties to the dispute and the Mediator.
- (i) Disclosure of any statement under sub-clause 11.3(g) to a third party requires the consent of the applicant and the respondent except where disclosure is required by law.
- (j) At the conclusion of the mediation the mediator should advise the CAC in writing whether the mediation was successful or unsuccessful.

11.4 Conditions

- (a) This clause does not affect the right of a party to take legal action in relation to a dispute.
- (b) The parties will share the costs equally of mediation under this sub-clause 11.4, unless they agree otherwise.
- (c) The parties must pay for their own costs of attending the mediation.
- (d) The parties must mediate in good faith.

12. ADMINISTRATION

12.1 Code Administration Committee

- (a) The Code will be administered by a Code Administration Committee (CAC);
- (b) The CAC will consist of signatories to the Code being:
 - (i) three appointees of ICA; and
 - (ii) three appointees of MTAA;
- (c) Members of the CAC shall hold office for a period of two (2) years, but may be re-nominated for further two (2) year periods subject to sub-clause 12.1(d);
- (d) The ICA and MTAA can replace or substitute their respective appointees at any time and for any reason, but in the spirit of the Code each will endeavour to ensure continuity of representation at CAC.
- (e) The members of the CAC will elect one of their number as chairperson for a 12 month period on the basis that an appointee of ICA and an appointee of MTAA will rotate as chairperson and the first rotation shall be determined by lot;
- (f) The chairperson will be responsible for arranging for administrative support for the CAC activities;
- (g) The CAC will meet at least two times a year, but may meet more frequently as required; and
- (h) Changes to the Code can be made by the CAC only on a consensual basis.

12.2 Role of the CAC

The CAC will:

- (a) develop a protocol for the appointment, establishment and operation of a national panel of mediators;
- (b) monitor compliance with the Code;
- (c) produce a publicly available annual report on the Code and provide a copy of the report to the relevant Australian Government Minister. The report will include:
 - (i) an assessment of Insurer and Repairer compliance with the Code;
 - (ii) the number and type of applications for EDR under the Code; and

(iii) any other matters the CAC considers relevant to the Code;

- (d) develop its own administrative procedures and protocols and obtain adequate funding to administer and monitor the Code from ICA and MTAA;
- (e) advise on the promotion of the Code within the Industry; and
- (f) conduct an initial internal review of the operation of the Code 12 months after the commencement of operation of the Code on 1 September 2006. This is to be followed by an external review of the operation of the Code every three years from the commencement of the Code.

12.3 Confidential Information

The appointees to the CAC must not disclose any confidential information acquired in the course of their appointment to the CAC unless required by law to do so.

Appendix C— Extracts from relevant minutes of the STAYSAFE Committee regarding the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme

This appendix contains relevant extracts from the minutes of STAYSAFE Committee meetings of:

- Wednesday 1 March 2006
- Monday 5 December 2005
- Tuesday 6 December 2005
- Wednesday 7 December 2005
- Monday 19 December 2005
- Monday 27 March 2006
- Thursday 29 June 2006

regarding the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme.

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

1:00 P.M., WEDNESDAY 1 MARCH 2006
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr Colless
Mr West
Mr Tingle

Legislative Assembly

Mr Gibson
Mr Souris
Mr Hunter
Mr Maguire
Ms Hay

Also in attendance: Mr Faulks, Manager of the Committee, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Barr and Mr Bartlett.

....

6. Inquiry into the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and motor vehicle smash repairs

The Chairman reviewed progress in the inquiry into the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and motor vehicle smash repairs, noting:

- Senior executive changes in NRMA Insurance;
- Reported statements by Mr Michael Hawker, Chief Executive, Insurance Australia Group, that "NRMA Insurance [will continue] to work with smash repairers to resolve a dispute over a new web-based system for allocating repairs...." (23 February 2006);

- Notice of a Bill from Mr Torbay MP that would contain anti-steering provision, allowing motorists to choose their own smash repairer and providing penalties for car insurers who use preferred repairers or parts;
- The meeting with Motor Traders Association and smash repairers at Parliament House today, 1 March 2006, organised by Mr Barr MP without consultation with the Committee.

The Committee deliberated.

It was agreed that public hearings under the inquiry into the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and motor vehicle smash repairs be resumed to review progress.

The Chairman indicated that he would speak with Mr Barr concerning the meeting with Motor Traders Association and smash repairers at Parliament House today.

....

11. General business

...

There being no further business, the Committee adjourned at 1:45 p.m..

Chairman

Committee Manager

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

9:30 A.M., MONDAY 27 MARCH 2006
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr West
Mr Colless

Legislative Assembly

Mr Gibson
Mr Souris
Mr Barr
Mr Maguire
Ms Hay
Mr Bartlett

Also in attendance: Mr Faulks, Manager of the Committee, Mr Nordin, Senior Committee Officer, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Tingle and Mr Hunter.

...

6. Inquiry into the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and motor vehicle smash repairs

The public were admitted.

James Strong
Michael Hawker
Insurance Australia Group

were recalled and examined on previous oath.

**David Issa
Robert McDonald
Insurance Australia Group**

were called and sworn.

The witnesses were examined by the Chairman and Members of the Committee.

Evidence concluded, the witnesses withdrew.

**James McCall
Gregory Coli
Insurance Australia Group**

were recalled and examined on previous oath.

The witnesses were examined by the Chairman and Members of the Committee.

Evidence concluded, the witnesses withdrew.

7. General business

...

There being no further business, the Committee adjourned at 12:00 p.m..

Chairman

Committee Manager

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

10:00 A.M., THURSDAY 29 JUNE 2006
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr West
Mr Brown
Mr Colless

Legislative Assembly

Mr Gibson
Mr Souris
Mr Hunter
Mr Maguire
Mr Barr

Also in attendance: Mr Faulks, Manager of the Committee, Mr Nordin, Senior Committee Officer, and Ms Phelps, Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Bartlett and Ms Hay.

...

6. Consideration of Chairman's draft report: 'Improving the health of the motor vehicle insurance and smash repair industries: A review of progress in the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and its implications for roadworthiness, crashworthiness, and road safety'

The Chairman presented the draft report: 'Improving the health of the motor vehicle insurance and smash repair industries: A review of progress in the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and its implications for roadworthiness, crashworthiness, and road safety'.

The draft report was accepted as being read.

The Committee proceeded to deliberate on the draft report:

Chapter 1

Paras. 1.1 – 1.19: read and agreed to

Chapter 2

Paras. 2.1 – 2.91, read and agreed to

On the motion of Mr West, seconded Mr Brown:

That the draft report: 'Improving the health of the motor vehicle insurance and smash repair industries: A review of progress in the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and its implications for roadworthiness, crashworthiness, and road safety' be read and agreed to.

Passed unanimously.

On the motion of Mr West, seconded Mr Brown:

That the draft report: 'Improving the health of the motor vehicle insurance and smash repair industries: A review of progress in the inquiry into motor vehicle smash repairs under the Insurance Australia Group (NRMA Insurance) Preferred Repairer Scheme and its implications for roadworthiness, crashworthiness, and road safety ' be accepted as a report of the STAYSAFE Committee, and that it be signed by the Chairman and presented to the House.

Passed unanimously.

On the motion of Mr West, seconded Mr Brown:

That the Chairman and Committee Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

8. General business

...

There being no further business, the Committee adjourned at 11:20 a.m..

Chairman

Committee Manager

